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SENATE SELECT COMMITTEE ON INTELLIGENCE INQUIRY INTO THE FBI INVESTIGATION OF THE COMMITTEE IN SOLIDARITY WITH THE PEOPLE OF EL SALVADOR (CISPES)

HEARINGS

BEFORE THE

SELECT COMMITTEE ON INTELLIGENCE

OF THE

UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

SECOND SESSION

ON

THE FBI INVESTIGATION OF THE COMMITTEE IN SOLIDARITY WITH THE PEOPLE OF EL SALVADOR (CISPES)

FEBRUARY 23, APRIL 13, SEPTEMBER 14, 1988

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CISPES INVESTIGATION

TUESDAY, FEBRUARY 23, 1988

U.S. SENATE,
SELECT COMMITTEE ON INTELLIGENCE,
Washington, DC.

The Select Committee met, pursuant to notice, at 9:16 a.m., in room 325, Russell Senate Office Building, Hon. David L. Boren (chairman of the committee) presiding.

Present: Senators Boren, Bradley, DeConcini, Metzenbaum, Cohen, Murkowski, Specter, Leahy, and Wilson.

Staff present: Sven Holmes, staff director and general counsel; James Dykstra, minority staff director; and Kathleen McGhee, chief clerk.

Chairman BOREN. We'll go ahead and begin. There are other Members who are on their way, but we'll go ahead at this time with opening statements.

Today marks the official commencement of an investigation by the Senate Select Committee on Intelligence into alleged improprieties by the Federal Bureau of Investigation in connection with its investigation of the Committee in Solidarity with the People of El Salvador, known as CISPES, and related groups.

Before we begin, I would like to welcome members of the Judiciary Committee to these proceedings. We expect other members of the committee will be joining us in the course of the morning. While the jurisdiction for this particular investigation resides with the Intelligence Committee, as we are charged with the oversight of counterespionage activities, there are many issues that will involve the jurisdiction of the Judiciary Committee. No doubt they will desire to pursue these questions at the appropriate time. In this regard, without objection I would like to enter into the record my correspondence with Chairman Biden regarding our mutual desire to structure an effective inquiry into this matter. I am only sorry that Senator Biden cannot be here today, and all of us join in wishing him a very speedy recovery.

[The documents referred to follow:]

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC, February 4, 1988.

Hon. DAVID L. BOREN,
Chairman, Select Committee on Intelligence,
U.S. Senate, Washington, DC.

DEAR DAVID: I've been talking to Ted Kennedy and Pat Leahy about doing a joint effort between the Judiciary Committee and the Intelligence Committee on the so-called CISPES investigation. I understand our staffs have been in contact and I think it would be a good idea to do a joint document request between the two com-

mittees and that we should create some mechanism for Judiciary Committee staff who have Top Secret security clearances to review those documents subject to the procedures of S. Res. 400.

Perhaps I could designate two Judiciary staff members from the majority and Senator Thurmond could designate two Judiciary staff members from the minority, all with appropriate clearances, to review the documents. You and I could arrive at some arrangement for the joint closed hearings and some type of public hearing as the investigation proceeds.

Why don't you have Sven Holmes get in touch with Mark Gitenstein, Chief Counsel of the Judiciary Committee, to work out the details?

Sincerely,

JOSEPH R. BIDEN, JR.,
U.S. Senator.

U.S. SENATE,
SELECT COMMITTEE ON INTELLIGENCE,
Washington, DC, February 5, 1988.

Hon. JOSEPH BIDEN,
U.S. Senator, Washington, DC.

DEAR JOE: Thank you for your letter of February 4 which has arrived just as I am preparing to leave with Senators Byrd, Pell and Nunn to meet with NATO leaders on the INF Treaty.

In my view, to work out an arrangement to provide for another committee to share access to SSCI documents would, under our rules, require action by the full Committee. Of course, this could not be addressed until after we return from the recess.

In the meantime, the Committee has propounded questions and requested documents from the FBI under Senate Resolution 400 and is currently in the process of preparing follow-up interrogatories and a broader request for documents. This is being done in cooperation with the staff of the Judiciary Committee. Please understand that we would be happy to consider including any questions that the Judiciary Committee desires to ask in our follow-up request, which I anticipate will be transmitted on Monday. Please have Mark Gittenstein contact Sven Holmes to discuss this matter further with him.

Moreover, it is hoped that during the recess, the FBI will respond to our request and the staff will commence reviewing the first set of documents. As a result, we will be able to more accurately determine the scope and magnitude of the problem that we face. This will give me a clearer basis upon which to proceed and to determine better the appropriate role for each of our two Committees.

Let's plan on getting together personally after the recess to discuss the best way in which to pursue this matter.

Sincerely,

DAVID L. BOREN,
Chairman.

Chairman BOREN. At the outset, some background on the history of this investigation is instructive. This matter came to the attention of the Intelligence Committee in the context of the confirmation hearings of William Webster to be Director of the Central Intelligency Agency. At that time, the Committee determined that it would be necessary to pursue the issues raised regarding this investigation after a new Director of the FBI was in place. During the confirmation process of Judge Sessions, and at his subsequent courtesy calls to Members of the Intelligence Committee in late 1987, he was informed that it was the intention of the Intelligence Committee to pursue this matter as soon as possible.

On January 27, 1988, certain documents were released pursuant to a request under the Freedom of Information Act. As a result, on January 28, Senator Cohen and I sent a letter to Director Sessions formalizing our previous oral request for information regarding the CISPES investigation. On February 2, Director Sessions appeared before the Intelligence Committee and testified in a closed hearing

regarding both the internal inquiry under way within the FBI with respect to this matter as well as the underlying substantive issues. On Feburary 8, Senator Cohen and I followed up his appearance with a set of questions and a request for documents developed in conjunction with the Judiciary Committee staff. These are in the briefing books and without objection I would like to enter these also into the record at this point.

[The documents referred to follow:]

U.S. SENATE,
SELECT COMMITTEE ON INTELLIGENCE,
Washington, DC, February 8, 1988.

Hon. WILLIAM S. SESSIONS,
Director, Federal Bureau of Investigation,
Department of Justice, Washington, DC.

DEAR DIRECTOR SESSIONS: Thank you for your appearance before the Senate Select Committee on Intelligence (SSCI) on Tuesday. As the comments of the Members made clear, there is deep concern regarding the contents of documents recently released by the FBI pursuant to a request under the Freedom of Information Act.

A preliminary review of these documents reinforces the resolve of the SSCI to pursue this matter vigorously, comprehensively and, to the extent possible, in public session. In this regard, we anticipate certain involvement by Members of the Judiciary Committee in matters that fall within their jurisdiction.

We are aware from your testimony that the FBI is in the process of responding to our initial formal request for information dated January 28, 1988, and that an internal group is being formed to expedite your review and report back to the SSCI. Further, we are aware that you are committed to delivering to the Committee within approximately one week the unredacted, classified version of documents reviewed and redacted for the recent release under FOIA.

In addition, as a follow-up to the hearing, Committee Members desire to propound specific questions and request certain documents regarding this matter (see attachment). We hope you will be able to respond as soon as possible. As you can see, the concern focuses on both the initial investigation and your present investigation into the previous activities by the FBI. Moreover, it is anticipated that your current review of the matter will encompass the questions propounded by Members of the Committee. Finally, as you know, the information provided pursuant to this request is covered by Senate Resolution 400.

We look forward to working with you. Thank you in advance for your cooperation.

Sincerely,

DAVID L. BOREN,
Chairman.
WILLIAM S. COHEN,
Vice Chairman.

FEBRUARY 8, 1988.

QUESTIONS

(1) Explain all the events, information, and sources thereof, that led to the initiation of the CISPES investigation, why they provided a reasonable indication of criminal activity or otherwise met the standards in the guidelines, the purpose of the investigation, the nature and frequency of any internal review during the course of the investigation, and who was involved. Discuss in full why the investigation was opened as a full-scope investigation of the entire group, rather than as an investigation of specific individuals or components of the group, and how that decision was justified in terms of FBI policies and priorities.

(a) Why and how did the FBI decide that it was necessary "to round out or develop information on the scope of activities and influence of CISPES?"

(b) What specific sources and items of information led the FBI to depart from its normal practice of investigating specifically suspected individuals, activities, or components of an organization?

(c) Were any precedents considered in connection with interpreting applicable standards in the guidelines? What were they?

(d) Who was involved in preparing options, recommending the decision, and reviewing its basis?

(2) Explain the changes in the situation that led to the termination of the CISPES investigation, why it no longer provided reasonable indication of criminal activity or otherwise met the standards in the guidelines, and who was involved.

(3) Did the CISPES investigation ever produce any information relevant to the purpose for which it was undertaken? If so, please describe.

(4) Describe the nature and scope of any past or present internal FBI inquiries with respect to the CISPES investigation, former informant Frank Varelli, or related matters. Specify the elements of the FBI conducting the inquiry, when it was conducted, the methods used, individuals from outside the Bureau involved, and any findings and consequences. What is being done now to respond to the Committee's request for a report?

(5) Identify and summarize briefly any FBI investigation or inquiry conducted by the FBI since 1981 with respect to any organization mentioned in connection with the FBI documents on CISPES released under FOIA. (See attached list.) Specify the guidelines under which such investigations were conducted and any criminal statutes involved.

(6) Identify and summarize briefly any investigation by the FBI or any other agency that resulted from or directly related to the CISPES investigation, including any Immigration Service investigations. Specify the FBI guidelines under which they were conducted or the other agency that conducted the investigation, and any criminal statutes involved.

(7) Provide the following data on the scope of the CISPES investigation: the number of man-years utilized, the volume of files compiled, the number of individuals named in the files, the number of individuals concerning whom the FBI made affirmative inquiries of any sort, and the number of individual preliminary or full investigations growing out of the CISPES investigation. How does this compare to other FBI investigations of groups under the FCI and domestic security guidelines?

(8) Attached are documents released under FOIA and made available to the Bureau. Some of these documents reflect the reporting of information about domestic political activity. Please explain whether such collection was warranted in terms of FBI policies and priorities, and if so, why.

(9) Some of the attached documents reflect uncertainty within the FBI as to the appropriate guidelines and policies for collection and reporting of information about domestic political activity. Please explain why this uncertainty existed and what steps were taken or should have been taken to provide adequate guidelines.

(10) Some of the attached documents reflect the use or proposed use of particular FBI surveillance techniques, including physical surveillance, surveillance on a college campus, recruitment of informants, and infiltration by undercover Agents. Please explain whether each technique was warranted in the particular circumstances in terms of FBI policies and priorities, and if so, why.

(11) Explain the circumstances under which the FBI received the analysis of CISPES from the Young America's Foundation. Was it completely unsolicited? Had there been prior contact with the Foundation or its members, including board members? Does the FBI have any indication that others in the U.S. Government recommended to either the FBI or the Foundation that this analysis be prepared or transmitted to the FBI?

(12) On what basis, and by whom, was the decision made to transmit the Young America's Foundation analysis to the field offices? Is it normal to send such material to field offices? If so, please estimate the frequency and provide other typical examples. Are analyses by liberal lobbying groups transmitted to the field as regularly as analyses by conservative groups? How is the decision to transmit this analysis to the field offices on July 13, 1984, consistent with the policy directive sent to the field from FBIHQ on July 26, 1984?

FEBRUARY 8, 1988.

DOCUMENT REQUEST

(1) All FBI headquarters and Dallas field office documents concerning CISPES, under that name or any other previous name (e.g., National Network in Solidarity with the People of El Salvador).

(2) All FBI headquarters and Dallas field office documents otherwise responsive to the FOIA request(s) upon which the public disclosures in January, 1988, regarding the CISPES investigation were based.

(3) All FBI headquarters and Dallas field office documents concerning Frank Varelli, including but not limited to the results of any inquiries conducted with respect to his activities and relationships with FBI personnel.

(4) Any FBI headquarters documents, other than covered above, that pertain to the initiation, review, continuation, and termination of the investigations of CISPES, including, without limitation, documents in the files of individual FBI officials and the files on related matters such as the FMLN, the Salvadoran Communist Party, the Cuban DGI, support for the FMLN or other similarly oriented political causes in Central America from elements in the United States, and efforts to gain such support.

(6) Any other FBI headquarters documents that reflect any communications to or from any department, agency, interagency group, including, without limitation, the "Restricted Interagency Group" (the "RIG"), or any other entity of the U.S. Government, or any private individual or organization that refer to, or are otherwise related to:

(a) CISPES; or

(b) support for the FMLN or other similarly oriented political causes in Central America from elements in the United States, including efforts to gain such support.

ORGANIZATIONS

Atlanta: Southern Christian Leadership Conference, Southern Organizing Committee, Little Five Points Community Center, Ad Hoc Committee for the Nicaragua Contingency Plan.

Baltimore: Sisters of Mercy Generalte, Central America Solidarity Committee.

Birmingham: Birmingham Committee in Solidarity with Central America, United Campuses Against Nuclear War, November 12th Coalition.

Chicago: New El Salvador Today (NEST), Friends Religious Society, Maryknoll Sisters, Church of the Brothers, Chicago Interreligious Task Force.

Cleveland: St. Patricks Church, Central America Solidarity Committee, Erieview Catholic High School Center, Sisters' Coalition for Justice, Clergy and Laity Concerned, Intelligence Task Force on Central America, Draft Military Education Project, Isaiah Center, Emergency Nat'l. Conference Against U.S. Military Intervention in Central America and the Caribbean, United Steel Workers Union, United Auto Workers Union, National Education Association (NEA), United Church of Christ, Commission for Racial Justice, Virginia Education Association, Amalgamated Clothing and Textile Workers, Ecumenical Program for Inter-American Communication and Action.

Denver: Rocky Mountains Plains Central America Solidarity Network.

Houston: Caravan Itinerary, Coalition for Peace and Justice in Central America, Casa El Salvador, Casa Oscar Romero, Texas April Mobilization for Peace, Jobs and Justice.

Jacksonville: Center for Participant Education, Florida State University, Tallahassee Peace Coalition.

Kansas City: Wichita State University, University of Kansas at Lawrence.

Los Angeles: Marxist Leninist Party of the USA, Alliance for Survival, Coligent Association for Research of Principles (CARP) aka Moonies, Prairie Fire Organization, May 19th Coalition, The Rebel, Peace and Justice Center, Los Angeles Credit Union CSO, El Rescate, Casa Nicaragua, Casa El Salvador, 12th of November Coalition, Guatemala Information Center, New Movement in Solidarity with the Puerto Rican and Mexican Revolutions.

Louisville: Nicaragua Information Center, Sanctuary Coalition, St. William R.C. Church, Fellowship of Reconciliation, La Casa El Salvador, Committee of Salvadoran Unionists in Exile, Pledge of Resistance.

Memphis: Vanderbilt University, Fisk University, Tennessee State.

Miami: Committee for Non-Intervention in Nicaragua, Latin American and Caribbean Solidarity Association.

Milwaukee: Livermore Action Group, SHARE, Mobilization for Survival, All People's Congress, Sanctuary Coordinating Committee, Central America Solidarity Committee, Corporate Responsibilities and Beatitudes Program.

Minneapolis: St. Lukes Presbyterian of Minetonka, Twin Cities Friends Meeting, Walker Methodist Community Church, El Salvador Solidarity Central America Coalition, Guatemala Solidarity Committee, Nicaragua Solidarity Committee, Central America Working Group of University of Minnesota, Ecumenical Task Force on Central America, Honduran Task Force, Minnesota People's Commission on Central America, American Indian Movement (AIM).

Mobile: University of South Alabama Medical School.

New Haven: Friends of the University of El Salvador.

New Orleans: New Orleans Nicaragua Solidarity Organization.

New York: Icarus Films, First Run Features, Agricultural Missions, Infant Formula Action Coalition, May 19th Communist Organization, November 12th Coalition, Interchurch Letter, Council of Churches, Clergy and Laity Concerned, Fellowship of Reconciliation, Marazul Tours, El Salvador Alert, North American Committee on Latin America (NACLA), Molina Lara Tour, USLA Justice Committee.

Newark: Casa El Salvador.

Norfolk: Jefferson Ave. Bookstore, Young Socialist Alliance, Network in Solidarity with the People of Guatemala, Network in Solidarity with the People of Nicaragua, November 12 Coalition, Haitian Refugee Project, Black United Front, Women's Rape Crisis Center, Jobs and Peace, People's Anti-War Mobilization, Casa El Salvador, U.S.-Grenada Friendship Committee, Old Dominion University Chapter CISPES, St. Mary's Catholic Church.

Oklahoma City: Sisters of Benedict, Quaker Group, Coalition for Social Justice, National Lawyer's Guild, United Auto Workers, Local 1999, Maryknoll Sisters, Alliance Against Racism and Political Oppression.

Philadelphia: Feminists in Solidarity with Central America and Caribbean People, Christians Concerned About El Salvador, Central America Working Group, Central America Solidarity Group, Friends Peace Committee, Comite del Istmo, Delaware Valley Committee CISPES, Philadelphia Labor Committee in Support of Democracy and Human Rights in El Salvador, Hospital Worker's Union, Afro-American Coalition for a Free Grenada, International Workers Party, Labor Committee on El Salvador, El Salvador Alert, Witness for Peace, Philadelphia Human Rights Group, Philadelphia Nuclear Freeze, South Jersey Campaign for a Nuclear Freeze, Federation of State County and Municipal Workers Union.

Phoenix: Mexico-US Border Conference in Solidarity with El Salvador, Tucson Committee for Human Rights, Arizona State University CISPES.

Pittsburgh: Thomas Merton Center, Pittsburgh Mennonite Church, Witness for Peace, Interfaith Sanctuary Movement, Central America Solidarity Committee, Projecto Libertad, Socialist Worker's Party, NAM, TSA.

Salt Lake City: Central America Solidarity Committee.

San Antonio: Riverside Church (New York) Interfaith Group. San Diego: Pledge of Resistance.

San Francisco: Alliance for Survival, Casa El Salvador, TACA Airlines, Aeronica, Cal Tech, Mother Goose Magazine, Central American Intervention, Spring Mobilization for Peace, Jobs, and Justice.

Tampa: National Network in Solidarity with the People of Guatemala, National Network in Solidarity with the People of Nicaragua, University of South Florida CISPES, Central American Solidarity Association.

Washington Field Office: Ad Hoc Committee for a July 2, Emergency Mobilization, Workers World Party, November 29th Coalition, All Peoples Congress, People's Antiwar Mobilization, United Freedom Front, Association in Solidarity with Guatemala, National Association of Women Religious, Washington Area Labor Committee on Central America and Caribbean, Casa El Salvador, Central America Refugee Committee, U.S. Anti-imperialist League, Oscar Romero Coalition, Union of Democratic Filipinos (KDP), Teatro Nuestro, John Brown Anti-Klan Committee, May 19th Communist Organization, Ecumenical Center of St. Paul and St. Augustine, People's Alternative to the Kissinger Commission.

Other: National Center for Development Policy, Witness for Peace.

Chairman BOREN. Today our purpose is essentially three-fold. First, to hear an interim report on the status of the internal FBI investigation into the CISPES inquiry. And I underline the word interim because this is just a beginning, as we are still in the initial stages in many respects in this inquiry. Second, to learn the substantive predicate for the CISPES investigation, to find out why it was conducted and under what guidelines it was started. And third, to review the general policy with respect to such investigations that is followed by the FBI at the present time. We want to know how the CISPES investigation was started, why it was stopped, and the general guidelines under which the FBI is operating in similar situations. Of course, since the internal investigation is in progress both at the FBI and independently at the Intelligence Committee, it would be premature to require at this time a report on the findings and conclusions of the internal FBI investigation.

Rather, we anticipate that when the internal investigation is concluded, Director Sessions will appear before this committee to report its results.

It should be noted that these proceedings do constitute a formal investigation. It is my intention to follow up this session today with additional hearings, as many as are necessary, both open and closed, to pursue the matter fully.

Moreover, it should be emphasized that the Intelligence Committee is not merely reviewing the internal investigation into this matter by the FBI, although this is clearly part of our responsibility. We are also in the process of conducting our own indendent investigation. This will include a review of over 3,000 pages of classified headquarters documents regarding the CISPES investigation, as well as the classified field office documents, some of which we understand will be released in the near future. Following this initial review, we'll be able to determine what additional documents, additional files, or additional questions are required, and whether there are gaps in the materials provided in terms of either missing documents or deletions from existing documents. Of course, all of this will be pursued in such a way as to protect sources and methods and so as not to jeopardize ongoing appropriate investigations by the Federal Bureau of Investigation.

While many of the documents involved deal with classified information, it is my hope that the committee will be in a position to produce an unclassified report with respect to this matter not only because of the seriousness of the allegations, but also because the public has a right to know that the United States law enforcement agencies are operating professionally and without bias or outside interference.

Today we have two principal witnesses. Our first witness is Mr. Bill Gavin, the Assistant Director in charge of the Inspection Division of the FBI, who will begin by telling us the status of the internal investigation which he is conducting for Director Sessions. At the committee's closed meeting on February 2, Director Sessions agreed to make an independent review of this matter, and the committee submitted on February 8, the letter with accompanying questions that I have put in the record. We appreciate, Mr. Gavin, your being with us this morning to give us a status report of the Inspection Division inquiry that is being conducted for the Director.

Following Mr. Gavin, Executive Assistant Director Oliver "Buck" Revell will discuss the opening, review, and closing of the CISPES investigation; the decision made to open it, the decision made to close it, and the current FBI policy for investigations. He is accompanied by senior officials of the FBI's Criminal Investigative Division, Deputy Director Bob Ricks and Terrorism Section Chief Steve Pomerantz. We do not expect Mr. Revell to have all the answers this morning to all of the questions that have arisen about this case because, as I underlined, we are still in the initial stages. That is certainly true of our own internal investigation in the committee as we just in the last few days, in fact 4 or 5 days ago, received several thousand pages of documents. And, of course, it will take some time to make a thorough review of that information before we will know the appropriate questions to pursue and to ask. But I

do believe that Mr. Revell's testimony should help the committee understand the framework of laws, guidelines, policies, and review mechanisms for FBI investigations. Director Sessions and Mr. Revell spoke to the press on February 2 about the basis for the CISPES investigation and the governing policies including many of the same kinds of questions I would expect to be raised today.

We are very conscious of the fact that much of the information about this matter is classified and that the Director has the Inspection Division reviewing these matters, so our discussion today will be preliminary.

Finally, before I turn to my colleagues for their opening remarks, let me make a brief personal observation about this case. Last year, at the hearings on Judge Webster's nomination as CIA Director, we raised questions about an aspect of the FBI's investigation of CISPES. One of the FBI's informants in that investigation, a man named Frank Varelli, had charged the FBI with conducting illegal and improper activities. He alleged that the FBI engaged in illegal searches and that the Bureau compiled a terrorist photograph album which included entries on prominent Americans such as Representative Pat Schroeder and others. Judge Webster answered those charges, and the committee did not find reason to pursue the issue further in the context of his nomination.

But I indicated my concern at that time about the FBI's handling of a sensitive investigation of a group that was practicing political dissent in this country. I expressed then, and I repeat now, my concern with the effectiveness of the mechanism which we have put in place to make sure that things do not go wrong, that improper activities do not occur in the area of investigating lawful political dissent by American citizens.

The American people want to make certain that the authority of the FBI is not abused in terms of legitimate and rightful domestic political dissent. There has to be a system in place that will surface, bring to the attention of responsible officials, and address the complaints and problems that arise in terms of surveillance of domestic political dissent.

In the case of CISPES, we had an investigation of a group that was engaged in political dissent, and we now believe that there appears to be a lack of sufficient evidence of illegal or terrorist-related activity to have continued that investigation against that group. We are deeply concerned about ensuring that the FBI or any agency or government does not interfere with legitimate domestic political dissent.

So these are very important matters that we are discussing today. We reach no premature conclusions. We're beginning now at the preliminary stages. This is a matter of seriousness, of importance, that demands a very thorough look by this committee. And that's exactly what this committee intends to give it.

So I turn now to my colleague, the Vice Chairman, Senator Cohen, the Senator from Maine, for any opening remarks that he might have.

Senator COHEN. Thank you Mr. Chairman.

I'd like to echo your statement about not leaping to any conclusions prematurely, either to absolve or condemn the FBI, until all the facts are in. Our staff has just begun a review of the literally

thousands of documents that are involved, and we have not yet interviewed any of the participants. This is going to happen in due course. The committee will have an opportunity to question all of the appropriate witnesses, both in public and closed session, based upon the complete documentary record.

But there are some things that are in the public domain that I think we ought to keep in mind as we proceed.

First, the CISPES investigation was not, and I'd like to emphasize that, was not an unauthorized investigation. It was approved by the Department of Justice in 1983 under the FBI's foreign counterintelligence guidelines established by the Attorney General. It was, however, carried out not by the intelligence division, which ordinarily handles foreign counterintelligence investigations, but rather by the FBI's criminal division as a terrorism investigation. FBI headquarters authorized all of its field officers to undertake appropriate inquiries.

And I think it should be recognized that all the investigations of domestic organizations conducted under the foreign counterintelligence guidelines, including this one, are reported annually to this committee. And this was done back in 1983. Indeed the committee staff, at that time, questioned the predicate for the initiation of this particular investigation. But, we never explored how it was carried out in the field, except for our questioning—as the Chairman has indicated—of Judge Webster last spring during his confirmation hearings concerning the allegations of former FBI informant Frank Varelli with respect to the activities in the Dallas field office. It's, of course, evident now that the investigation of CISPES went well beyond Dallas.

Indeed, this investigation was carried out with the knowledge of, and under the direction of, FBI headquarters. And virtually all of the information developed by these field inquiries was sent to FBI headquarters, which in turn provided direction to the field. Now, periodically the Department of Justice also reviewed the product of the investigation in order to assess whether it continued to meet the guidelines. Whether Justice saw all of the reporting remains to be seen, but clearly Justice officials had access to this information.

The precise dimensions of the investigation have yet to be established. But still I think it's apparent that whatever the rationale for its initiation, it resulted in the FBI subjecting many Americans and U.S. organizations to various types of scrutiny without any basis other than the exercise of their first amendment rights. Now it's one thing for the FBI to attempt to determine whether various persons and organizations in contact with an organization under investigation are indeed participating in acts which would violate the law. It's quite something else again for the FBI to subject to surveillance and maintain investigative files on U.S. citizens and organizations where there is nothing whatsoever to suggest their involvement in any illegal behavior.

And, indeed, as the records which have already been released indicate, there was concern about this in some of the FBI field offices who were asked to do this.

In the end, the FBI, acting pursuant to instructions from the Department of Justice, closed down this investigation in June of 1985, after Justice found that it had not produced evidence bearing upon

the original purpose of the investigation, but rather only information concerning political activities protected by the first amendment. But I think it is apparent that the information developed during the investigation is still a part of the FBI's permanent files. It seems to me, Mr. Chairman, that once this investigation is completed, there ought to be an effort made to purge all of this information from those files.

There is another aspect of this matter which troubles me. Here we have CISPES, which is thought to be raising money for the FMLN in El Salvador, which the United States opposes. To investigate them, the FBI launched a nationwide, dragnet-type operation using classified guidelines which swept in many Americans and U.S. organizations who are political activists of the left but have nothing to do with CISPES or the FMLN. Many oppose the U.S. policies elsewhere in Central America. And I would have to contrast that situation with those American citizens who were thought to be raising money for the Nicaraguan resistance, the Contras.

We've been told, and I think, Mr. Revell, in your opening statement you've indicated that there were FBI investigations to determine whether the Neutrality Acts were violated, but instead of a nationwide dragnet under classified intelligence guidelines, it was a much more limited, more surgical type of investigation which did not sweep in all sorts of political activities from the right. Now the FBI, no doubt, will take the position that it makes no difference whether the United States is officially supporting the Contras, and not the FMLN, in terms of how it conducts an investigation of possible criminal violations.

But I think we have here an example which suggests the treatment an individual or a group receives at the hands of the FBI may vary depending upon which policy one is supporting. The Chairman, myself, and several others had occasion to serve on the Iran-Contra investigation. During the course of that investigation, we had several private citizens, prominent individuals of this country, who were called to testify indicating that they indeed had been engaged in fundraising activities on behalf of the Contras. They had contributed money to the Contras not simply for humanitarian purposes, but also for the purchase of weapons. It is a legitimate question whether or not the Justice Department recommended an investigation of individuals identified as contributing funds for the purchase of weapons. And I hope the FBI will be able to comment on this during the course of its testimony.

Mr. Chairman, I also hope we can use this hearing and the ones which follow to ascertain precisely what problems are involved in this case. Was it that the guidelines themselves were too broad? Did the CISPES case, in fact, satisfy the guidelines? Was it that the case was handled as a criminal matter by elements of the FBI which were not used to handling politically sensitive cases raising first amendment concerns? Were there too many constraints on investigative activities in the field? On retaining irrelevant information developed as a result of them? Was there adequate supervision from the FBI Headquarters? From the Department of Justice?

These are some of the questions which I think this hearing and future ones will attempt to answer.

In closing, Mr. Chairman, let me add that while we appreciate the cooperation that we have received from the FBI in providing us with headquarter files in this case, in my view, there are still far too many deletions for the committee to be able to evaluate a number of the documents concerned. And I would hope that you'd be willing to reconsider many of these in consultation with our staff so that we can complete the inquiry expeditiously and with confidence that we fully evaluated all pertinent information.

I understand that there may be concern that the committee should not have access to particular sources and identify those sources. But some of the documents that have in fact been produced for the committee contain pages of redacted information, making it virtually impossible for us to pass any judgment on the reliability of the information and the basis for the rationale for the investigation itself. And I would hope that during the course of this hearing we might explore ways in which the committee and the Bureau could come to an understanding that while not seeking to find specific names as such, we still need to have more information than we've been provided with. And I hope that we can obtain that during the course of the investigations.

Chairman BOREN. Thank you very much, Senator Cohen.

Senator Specter?

Senator SPECTER. Thank you, Mr. Chairman.

At the outset, Mr. Chairman, I commend you for scheduling these hearings so promptly, because this issue is one of great importance as the government seeks to take appropriate action against serious foreign action if there is such action and at the same time to have an appropriate protection of U.S. constitutional rights.

There are many questions which I think have to be answered, and this hearing is a good way to start. As I have reviewed the matters preliminarily, a question exists in my mind as to whether this investigation should have proceeded under the domestic terrorism guidelines as opposed to the foreign counterintelligence guidelines. Had the matter proceeded under domestic terrorism guidelines, there would have been substantially greater protection for those who were subject to investigation.

The predicate has to be justified and we will have to see, in the course of these hearings, whether it was a proper course to proceed under the foreign counterintelligence guidelines which are classified. And then the question ultimately is whether there should have been any investigation at all; whether there was a sufficient predicate to proceed under any set of guidelines.

As Senator Cohen has noted, the information which has been provided to the committee so far contains more blackouts than print. So it is a little hard for us to know right now precisely what did happen. It may be as my reading suggests, that the matter was started back in 1981 under the information provided by the then secret informant since identified, Mr. Frank Varelli, and the investigation proceeded under the Foreign Agents Registration Act and was closed out. Again, as I read the incomplete file, because there was no showing of any illegality. Essentially stated, there was no foreign control to warrant further investigation under that line.

One of the questions which I will have is what new information, if any, was available after the investigation was closed out under the Foreign Agent Registration Act? On the face of the information provided so far, there is no indication that there was any new information which would have warranted a broader investigation.

The issues are obviously very important because on the face of the documents which have been submitted so far, there is a clear cut showing of very extensive political activity. And when we have an investigation of alleged illegal foreign activities, it has to be balanced in a very sensitive way against the indicators of legitimate political activity. And the information presented at the very outset contains this reference that CISPES, the Committee In Solidarity With the People of El Salvador, is a "broad coalition of groups and individuals opposed to United States intervention in El Salvador and attempts to educate the United States public on the legitimacy of the opposition movement represented by the Democratic Revolutionary Front, the political arm of the El Salvador leftist movement."

And in the initial papers provided, there is a long list of organizations which are obviously legitimate on their face. Mentioning just a few from my state, the Central American Solidarity Group, University of Pennsylavnia. The Friends Peace Committee from Philadelphia. The Philadelphia Labor Committee in Support of Democracy and Human Rights. So that with this material available at the outset and the kinds of organizations which are listed here, it becomes all the more important that there be a very, very close scrutiny of the kinds of investigations which are used and the guidelines which are activated.

There is another issue in my mind, Mr. Chairman, which I would like to explore early on and that is how far up the line in the FBI was supervision applied? The supervision from the Department of Justice Office of Intelligence Policy and Review is realistically limited. They get what is called an LHM, a Letter Head Memorandum. And they get that a year after the investigation is in process. And as I understand it, after the first year, they got the information and it appeared to pass muster but they don't really review it in much detail. Then when they got the Letter Head Memorandum the second year, they raised some questions. They didn't say it was wrong, just raised some questions. But the questions themselves then caused the FBI to make a check and the FBI discontinued the investigation. It was not the Attorney General or Department of Justice Office of Intelligence Policy and Review. And there is a memorandum in the file in 1984 to the Director from the Denver office raising this question: Denver concurs with New Orleans that in spite of attempts by the bureau to clarify guidelines and goals for this investigation, the field is still not sure of how much seemingly legitimate political activity can be monitored.

With such a memorandum going to the Director, the question then arises, what did the Director do? How far up the line was it reviewed by those in the FBI who would have a greater understanding of the legal procedures and the sensitivity of these first amendment issues?

Mr. Chairman, I probably spoke at an undue length, but I wanted to outline some of the questions which I believe are in-

volved here which I intend to pursue and perhaps to the extent that we don't ask specific questions, we'll set the parameters so that we can get responses from the FBI.

Thank you very much.

Chairman BOREN. Thank you very much, Senator Specter. As I said, we are at preliminary stages. Our own staff has not had an opportunity yet to fully review the thousands of pages of documents which have just been received. So I do view this morning's hearing as an opportunity to set parameters for the asking of future questions as much as to air specific questions today.

Senator Metzenbaum?

Senator METZENBAUM. Thank you, Mr. Chairman.

I want to join in commending you for setting up this public hearing so promptly. As you know, I've spoken with you about the matter and felt a need to do so.

My concern is rooted in the history of the FBI, an agency in which all of us would like to have total confidence. We found in retrospect that under J. Edgar Hoover, it wasn't the agency we had hoped it to be. But later Judge William Webster became the FBI Director. And I think without exception, every Member of the Congress—as well as the American people—felt a great sense of confidence in him. Some of the actions that have come to light recently force us to raise anew that whole issue.

And I must say it was with a great sense of disappointment that I learned the new Director, who was confirmed unanimously by the Senate, is not with us this morning. For I think that the issues we are talking about go to the very heart of the confidence the American people have in the FBI, and the Congress of the United States as well.

Having said that, let me say that I met the other day with a professor from Xavier University, a Catholic institution in Cincinnati, Ohio, and had him tell me directly his story. It was a rather shocking story about the investigation of him. But more shocking than the investigation of him was the fact that the local FBI field office was putting out continued denials that it had investigated him. The professor was prepared to indicate the names of individuals contacted by the FBI, who didn't want their indentity disclosed but who were not truly any great secret. And the FBI, in investigating him, had actually left their cards with the security people at the Xavier University. It was irrefutable that he had been investigated, and yet we found that the FBI was denying that fact.

I must say that the FBI is a crucial institution. We want it to work. It tackles the hard cases: organized crime; white collar crime; espionage and terrorism. We give it powers that no other institution has, to get the information it needs: access to bank and phone records; wiretaps and searches, with proper approval; and the right to use undercover agents all over the country.

I share the comment that I heard the Senator from Maine making, with reference to the material that has been provided to us with almost everything redacted out of it. And I wonder how can we really make an appropriate inquiry under those circumstances.

But the powers the FBI has do not come from on high. They come with consent of the governed. And that consent is based upon

a social contract. The American people expect that the FBI will use its investigative powers responsibly, as well as efficiently. I have some concern as to whether they have done so. The American people expect the FBI to track down criminals and foreign agents, not law abiding Americans who exercise their constitutional right to oppose U.S. policy. The American people do not intend for the FBI to spend its time watching people just because the *Cincinnati Enquirer* mentions them "as being involved in activities contrary to the foreign policy of the United States."

I don't believe that a professor who opposes U.S. policy should expect to have the FBI asking his colleagues about him. Nor should the FBI then try to deny that it ever happened.

The American people have provided the FBI with great powers, personnel and funds. And they do not intend for the FBI to rely upon a right-wing group like the Young America's Foundation to crank out accusations that the bureau then sends to half of its field offices nationwide.

I must tell you that when I saw that document, I was absolutely flabbergasted that the FBI would consider it credible enough to send out to its offices around the country as if it were gospel from on high.

Frankly, the FBI's prestige fell to rock bottom in the 1970's when its disruption campaigns and its wiretapping of Reverend Martin Luther King were exposed. For over a decade, we on the Judiciary and Intelligence Committees have been working to repair that breach. We have supported guidelines to keep the FBI within the strictures of our Constitution and the law. And at the same time, we have given the FBI new powers when those were needed.

It will take only a few abuses of those powers to once again undermine the public's confidence in the FBI. It will take only a few FBI efforts to sweet talk their way out of a mess before people again wonder how much the bureau has to hide.

As I previously stated, Director Sessions chose not to be present at this hearing. It's unfortunate. He is a busy man, but so are we. And the issues that are before us are very important.

I would hope that whenever the FBI appears to have stepped beyond the bounds of propriety, it will be the Director to whom we can look to see to it that we get to the bottom of the issue.

I was much impressed with the Director when he became before us for confirmation. I still believe him to be an able man and a man of integrity. And I believe that the buck stops with the Director.

I hope that our witnesses will take some messages back to the Director. First, the bureau must manage and assess its operations. Investigations of political groups deserve high level attention to make sure that the predicate, the scope and the investigative methods are all proper.

That does not mean waiting 2 years for the Justice Department to tell you that your investigation is uncovering nothing more than people exercising their constitutional rights. It does mean taking a close look at what an informer tells you or what a field office sends you, so you don't get fooled.

And second, the bureau must be more sensitive to the risk that other agencies will use it for their own ends. In the Iran-Contra

affair, we found the White House trying to stop the FBI from investigating illegal support to the Contras. The previous Director wasn't always informed of this, and he later had to chastise one of today's witnesses.

In the CISPES case, we see the Justice Department demanding an investigation of those who oppose U.S. policy, on the basis of a document that the State Department had passed to right-wing publicists. We have just begun our investigation and do not know what we will find. But this urge to have the FBI investigate dissent is all too reminiscent of the Vietnam era. At the very least, it is a reminder to Director Sessions of the pressures that he must resist if public and congressional trust in the FBI is to be maintained.

Again, I want to commend the Chairman for convening this meeting promptly. I don't think that we ought to deal in general overall concepts and what policies are. I think we ought to find out why the FBI has conducted itself as it has and what we can look forward to in the future.

Thank you, Mr. Chairman.

Chairman BOREN. Thank you, Senator Metzenbaum.

Senator Murkowski?

Senator MURKOWSKI. Thank you, Mr. Chairman.

I too want to express my gratitude for the prompt manner in which you called this hearing. You know, we invest our federal law enforcement agencies with a good deal of power over our citizens. In return, our citizens have every right to expect and demand that this power be used responsibly and within the law.

Those who enforce our laws must be held accountable to those whom the people have elected to make those laws. Now in this case, there are certainly serious concerns that the FBI may have launched an investigation without sufficient cause. That the investigation may have been too broad. Perhaps gone on too long. I don't know to what extent any these charges are valid. It's my understanding that the committee has not had an opportunity to totally digest the volumes of information available to it. But I think this hearing should certainly help find the answer.

Mr. Chairman, I'm also concerned about maintaining a balance in this inquiry. It's easy for us in the Congress to become armchair critics, to sit up in the stands and apply unreasonable standards of performance on those in the arena. We must never forget that the men and women of the FBI are really the front line of defense in the war against international terrorism. We expect them to protect us without compromising our civil liberties. And the bureau certainly has to operate under demanding and often dangerous circumstances against adversaries who care nothing for those same civil liberties.

You know, upon reflection it's important to take note of the fact that the U.S. has escaped bombings and other acts of terrorism that have haunted Europe and the Middle East. Much of the credit to that remarkable achievement, of course, must go to the FBI.

There have been mistakes in the CISPES investigation. There are key questions that are going to have to come out of this hearing. Did the FBI have sufficient grounds for launching the investigation? We don't know. Public documents currently are silent on that point. Did the FBI use illegal methods of investigation? Was

the FBI inquiry too broad, going beyond the legitimate bounds of international terrorist investigation? Was the FBI investigation tainted by political bias?

We're going to find mistakes in the FBI like we find mistakes in every organization, every government agency. It's important, however, that we not use this hearing as a FBI-bashing excuse, but keep it confined to the questions at hand. This isn't an appropriate hearing to go back and reflect on the merits of FBI as a functional agency and arm of our federal government. It is a necessary arm.

It is interesting to me to be reminded of the policy within the FBI that all written communiques within the agency are written with the understanding that they are to stand up to a public scrutiny. The sole exception are communications that are classified for national security reasons and to safeguard the identity of agents.

So, Mr. Chairman, it's appropriate that we hold the FBI to account. But we must be responsible in the process. We must not hamstring dedicated public servants with excessive inquiries, regulations and restrictions. But we have the job, as you and I know, of maintaining appropriate oversight. I hope that these hearings will be efficient in finding the truth and not the fiction. And that the FBI can soon go back and turn its energies and full attention to the task of combatting the many foreign enemies of our democracy and particularly terrorism, which the world has come to know so well, unfortunately.

Thank you, Mr. Chairman.

Chairman BOREN. Thank you very much, Senator Murkowski. Your points are well taken. I think that all of us want to make sure, as we commence this inquiry, that it is done with balance.

As indicated in my opening statement, no one is jumping to any premature conclusions, nor will we. Just as we want to make certain that there is a proper predicate for any investigation of American citizens by any law enforcement agency, we also want to make certain that congressional committees do not declare agencies of our government to have committed wrongdoing before we have heard all of the facts and before all of the information is in.

This committee has, time and time again, through its budgetary and other actions demonstrated its commitment to the work of the Bureau, the very important counterespionage and counterterrorism role that the Bureau undertakes. That's a strong feeling held by all of us. It is certainly held by me as chairman of this committee.

I would say also that I appreciate the spirit with which the Director and the leaders of the Bureau have entered into this inquiry themselves. They've made it clear that if, indeed, anything has happened that shouldn't have happened, they are the first ones to want to try to correct the situation, to be willing to look at any policy changes or changes of guidelines or procedures that need to be made.

It is a very healthy thing that we can commence this inquiry without any feeling of defensiveness on either side and look at the facts. I think all of us want to make sure that we operate in the appropriate manner that takes care of those vital national security interests, Senator Murkowski, that you've just described and at the same time, making sure that we do not tread upon the legitimate

right of political association and political expression in this country in any way.

So I think all of us begin today with that spirit of wanting to make sure that this inquiry is conducted in a constructive, balanced, and fair way. We will certainly endeavor to do that.

At this time, I'm going to ask Mr. Gavin if he would begin his opening statement. I will swear in the witnesses today as we begin this inquiry.

If you would stand please and raise your right hand.

Do you swear that the testimony that you are about to give is the truth, the whole truth, and nothing but the truth?

Mr. GAVIN. Yes.

Mr. REVELL. I do.

Chairman BOREN. Thank you very much.

Mr. Gavin, we appreciate you being here. This is an unusual appearance by the Director of the Investigation Division. In many ways you occupy a place that might be called Inspector General in other agencies. And we appreciate your being present to update us on the scope of your investigation and how you see it proceeding.

STATEMENT OF WILLIAM GAVIN, ASSISTANT DIRECTOR, INSPECTION DIVISION, FEDERAL BUREAU OF INVESTIGATION

Mr. GAVIN. I appreciate the opportunity, Senator.

My primary purpose in being here this morning is to basically reaffirm the Director's commitment to a full investigation of the CISPES case. And second, to attempt to walk through some of the steps regarding the scope of the investigation which I am currently conducting.

The full investigation conducted by the inspection division commenced on February 3 of this year. The scope of the investigation is to look at the predication for the CISPES investigation, the documents behind the predication for that investigation, and every action that occurred not only at headquarters but in every field office as well, and to review and analyze the information provided by sources that either maintained or helped predicate this investigation.

The independence of the investigation which is being conducted stems from the individuals appointed to do the investigation. Number one, the Inspection Division of the FBI answers only to the Director of the FBI, not filtered through anyone else. So any investigation or any activity on the part of the Inspection Division goes directly to the Director of the FBI.

In this particular case, Director Sessions sat down with each and every member of my staff who was participating in the review of the CISPES investigation and reinforced that this will be a complete, total investigation, letting the chips fall where they may. Anything that was uncovered during the course of this review by the Inspection Division would be brought to his attention and appropriate action taken.

I don't know that my statement can be much longer than this. I have no interim report, as the committee recognized. This is not the time. The investigation is just beginning. There are no conclusions which I can offer at this particular time. And I hope that I

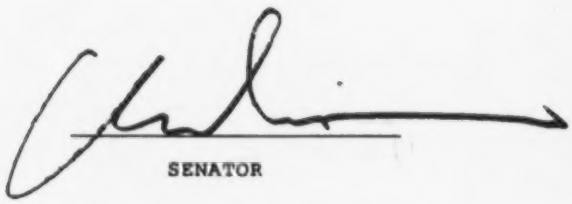
can assure this committee that the scope of the investigation is complete. It encompasses everything, and the dedication of the Director of the FBI. Director Sessions, to see this to its final end is a commitment that he has made and that we will live by.

Chairman BOREN. Let me enter into the record the signatures of 5 members of the committee, which is required under Rule 6 to authorize the commencement of an inquiry of this kind.

[The signatures referred to are as follows:]

REQUEST FOR INVESTIGATION

I HEREBY REQUEST THE SENATE SELECT COMMITTEE ON INTELLIGENCE TO CONDUCT A FORMAL INVESTIGATION INTO CISPES AND RELATED MATTERS PURSUANT TO RULE 6 OF THE COMMITTEE RULES.



SENATOR

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William A [illegible]

SENATOR

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Dennis DeConcini

SENATOR

REQUEST FOR INVESTIGATION

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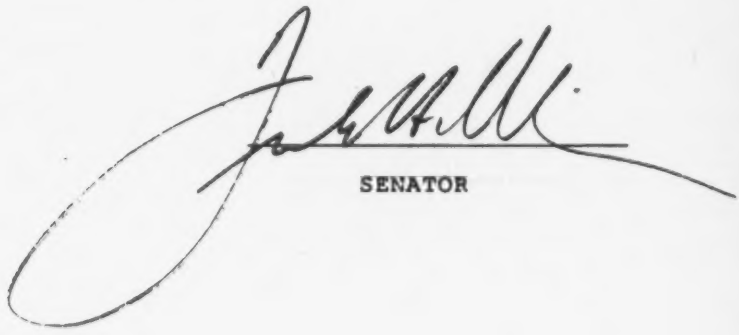

SENATOR

Chairman BOREN. The investigation as you said was commenced on February 3.

Mr. GAVIN. This particular commitment by Director Sessions, his mandate to me was on February 3 of this year. That is correct.

Chairman BOREN. I guess that would be the day after we had Director Sessions in the meeting with us. I believe that was February 2.

Mr. GAVIN. I would suspect so; yes, sir.

Chairman BOREN. And you are making an inquiry into all actions by all field offices as well?

Mr. GAVIN. That is correct. At the present time, we have just about completed and computerized the entire FBI headquarters files. The file of Mr. Varelli and the Dallas files. We are now in the process—we have received files, field office files from a number of field offices and are in the process of obtaining each and every file from every field office to analyze those as well.

Chairman BOREN. So your inquiry will provide a full account of the FBI's relationship with informant Frank Varelli? And you will attempt to determine the degree of reliance upon his statements as a part of your investigation, I gather?

Mr. GAVIN. Absolutely so, Senator. Yes, sir.

Chairman BOREN. Will you also make an inquiry to determine whether or not there were any external pressures brought to bear or any suggestions by any other official of government or any other agency of government in connection with the commencement of the CISPES inquiry, or the continuation of the CISPES inquiry?

Mr. GAVIN. Yes, sir, we will. Anything that comes to light during the conduct of the investigation that I have right now will be so noted; and will be reported.

Chairman BOREN. Will that be a question that you will specifically address to responsible officials at the Bureau headquarters as to whether or not anyone outside the Bureau urged that this kind of investigation be commenced?

Mr. GAVIN. The methodology will probably vary from case to case, but I have no reason not to ask that question should there be some indication that some outside influence was involved in this investigation.

Chairman BOREN. I think it would be important that you seek to ascertain that by asking that question or following that line of inquiry to make certain that there was no outside pressure.

Will you also determine whether or not there is anything like the CISPES investigation—investigation of any domestic political organizations that is being conducted under the same kinds of determination—ongoing since the CISPES investigation was closed in 1985?

Mr. GAVIN. No, Senator. That's not the scope of my particular inquiry right now. I think that is probably best answered by the Criminal Investigative Division who will probably do a review of that themselves.

Chairman BOREN. Well, we will ask then to make sure because we want to make certain that the FBI is not continuing anything of the same nature without a very thorough consideration by headquarters.

I gather you would also look into the instructions that headquarters gave to the field offices who were conducting this investigation?

Mr. GAVIN. Yes, sir, I will. The scope of the investigation will not only include what was done but the direction and the managerial input from both the field and headquarters into this matter.

Chairman BOREN. Will you look at the kinds of investigative techniques that were used to determine how intrusive they were? Whether they were limited to observation, whether they went into wiretaps or searches or other kinds of methods?

Mr. GAVIN. Absolutely.

Chairman BOREN. The committee sent letters on January 28 and February 8 propounding a series of questions that had been addressed to the Director. Have you seen these letters from the committee?

Mr. GAVIN. Yes, sir, I have.

Chairman BOREN. Would it be your plan to encompass these questions in your inquiry?

Mr. GAVIN. As part of the scope of the inquiry, all the concerns of this committee will be taken into consideration during the course of my investigation.

Chairman BOREN. Thank you very much. I'll turn now to the other members of the committee. Let me say that in this round of questioning of Mr. Gavin, we'll primarily be talking about procedure to be followed in the investigation as he is now, as I think we all understand, the responsible independent official for conducting this investigation. We will then turn to more of the questions about the origins of the investigation, the decision to open it, and the decision to close it with Mr. Revell.

Senator Cohen?

Senator COHEN. Thank you, Mr. Chairman.

Mr. Gavin, will you have access to complete records rather than what we have, which is largely redacted materials? Will you have total access to everything in the files?

Mr. GAVIN. Yes, sir. Absolutely so.

Senator COHEN. And would you be in a position to work with the staff of the committee to determine what additional information the committee might be entitled to or need to see in order to complete its investigation?

Mr. GAVIN. I think the answer to that question, I would have to sit down with the legal counsel to determine that. But should it be determined that this is a course of action that is both legal and the correct way to go, I would have no opposition to it.

Senator COHEN. What's the timetable you have in mind for completing?

Mr. GAVIN. The timetable is kind of open-ended at this particular point, Senator. It's very difficult for me to determine where the investigation is going to go until we start looking at each individual part.

I would hope—I would like to have the entire package wrapped up within a 90 day timeframe, but I don't know if that's a practical consideration.

Senator COHEN. Do you intend to conduct an investigation on the nature of the relationship between Frank Varelli and the FBI?

Mr. GAVIN. Yes, sir. That's part of the investigation.

Senator COHEN. In terms of his background, reliability, supervision, activities?

Mr. GAVIN. That's correct. When I said we will look into the direction of the management from both field perspective and the headquarters perspective, it will take into account the relationship with Frank Varelli.

Senator COHEN. In addition to making inquiries about what actually occurred, do you anticipate making any sort of recommendations?

Mr. GAVIN. We will present our findings to Director Sessions. He has requested that recommendations be made in this particular investigation where if in fact any deficiencies are detected and if in fact anything else is detected, to offer recommendations for improvement and to ensure that it doesn't happen again.

Senator COHEN. One of the questions I have is that the guidelines for international terrorism investigations are classified and they differ from domestic security terrorism investigations for a criminal terrorist enterprise. Would you anticipate making any recommendations as to whether this distinction number one, is valid and, number two, ought to be continued, or three, possibly modified?

Mr. GAVIN. I think it's too early to make any comment on that Senator.

Senator COHEN. Well the question is, do you intend at least to consider whether or not recommendations would be in order? Or have you just excluded that from your——

Mr. GAVIN. Nothing has been excluded. But I think at this early stage——

Senator COHEN. I'm not asking you to make a judgment at this point. What I'm asking you is to look at that—essentially, to see whether the distinction is valid and whether or not it ought to remain in effect. And if the distinction is not valid, what changes ought to be made. I think that that would be an appropriate area for you to examine.

Mr. GAVIN. It will be considered.

Senator COHEN. You may not be the person to address this question to—perhaps Mr. Revell is—but the question that came to mind concerns the FMLN. Is it a terrorist organization because it directs attacks upon Americans at home and abroad, i.e. in El Salvador? Does that make it a terrorist organization in terms of your inquiry in determining whether or not there was an appropriate investigation ordered under the counterintelligence authority as opposed to domestic terrorism?

Mr. GAVIN. You were absolutely right to begin with.

Senator COHEN. You're not the right person?

Mr. GAVIN. You'll have to direct that to Mr. Revell.

Senator COHEN. Okay. I will wait, Mr. Revell, and direct that to you.

I will yield back, Mr. Chairman.

Chairman. BOREN. Senator Specter?

Senator SPECTER. Thank you, Mr. Chairman.

Mr. Gavin, how do you view the scope of your independence in conducting this investigation?

Mr. GAVIN. Could you clarify that, Senator. Scope of my independence?

Senator SPECTER. Well, do you feel totally free to ask anybody any question which you see fit?

Mr. GAVIN. Absolutely.

Senator SPECTER. And that would include the former Director of the FBI, Judge Webster?

Mr. GAVIN. Absolutely.

Senator SPECTER. And that would include the current Director of the FBI, Judge Sessions?

Mr. GAVIN. Yes, sir.

Senator SPECTER. What happens if your investigation takes a line which conflicts with what Judge Sessions thinks ought to be done? Does his direction take precedence or do you have sufficient independence to conduct an investigation even if the Director of the FBI disagrees with your approach?

Mr. GAVIN. I think we have to consider a number of things here, Senator.

First, we have to look at how our approach differs.

Second, to judge my independence I will tell you that if in fact I think the investigation should go in a certain direction, it's going in that direction. And if the Director of the FBI says no, it won't go in that direction, I think I would have to at that particular time assert my independence. It is being done for him. And he has given me free rein to carry it out wherever it's going.

So that is his mandate, and I have no reason to believe at this particular point in time that he will alter his mandate to me.

Senator SPECTER. Well, I don't have any reason to believe he will either. But I pursue this question to understand the authority which you have and to see institutionally whether that authority is sufficient in a matter of this sort.

But if you come to a point where the Director disagrees with the way you are proceeding, isn't it true that he has the authority to remove you from the investigation?

Mr. GAVIN. There's no doubt about his authority. But I think we have to differentiate and maybe dig into what the disagreement is.

For instance, if criminal activity is uncovered during the course of this investigation, I don't know if you are hinting at something of that idea, could it be suspended by the Director of the FBI? My answer to that is any criminal activity detected on the part of any employee will go to the Department of Justice to the Chief Counsel, Mike Shaheen, OPR. It does now. It always has. And it has as long as I've had this job. And it will continue to do that.

Senator SPECTER. Well, Mr. Gavin, I'm not hinting at anything.

Mr. GAVIN. Okay.

Senator SPECTER. My sole question goes to your authority to take a position which may be in disagreement with what the Director says.

Mr. GAVIN. I have that authority.

Senator SPECTER. You do?

Mr. GAVIN. Yes, sir.

Senator SPECTER. Well, can the Director replace you?

Mr. GAVIN. Yes, sir, he can.

Senator SPECTER. Can the Director give you a countermanding order telling you not to do the investigation in the way which you seek to conduct it?

Mr. GAVIN. I think that we'd have to sit down and look at what the direction was, where he wanted to go, and why he wanted to go there. By a consensus of opinion.

Senator SPECTER. Well, if you reach a consensus, then there's no problem. But my question goes to the circumstance if there were no consensus.

As I understand it, the Director has the final word on it in the way the FBI is structured, in the way your department is structured, and in the way your job is structured. Isn't that the truth?

Mr. GAVIN. I answer only to the Director. That's correct.

Senator SPECTER. Well, I ask this question not to suggest in any way shape or form that Judge Sessions will limit you. But I think it is important to understand the parameters of your authority and to inquire, not in this matter, but independently, as to whether there ought to be greater independence for an investigative official like yourself.

You are not called an Inspector General, but you have that general purpose in the FBI. There are many other departments in the federal government which have independent Inspectors General who may conduct an investigation without regard to what the head of the agency has to say as well as a line of reporting independently to oversight committees. What you have may be sufficient for the FBI. I don't know. And it certainly may be sufficient for this investigation, especially in the context of a new director. When I say that, I'm not making any suggestion as to what the prior Director, Judge Webster, may have done. But I think it is important to keep those parameters in mind.

Mr. GAVIN. Senator, if I may respond to that?

I think that at the start the questioning was very specific to the CISPES investigation and that's my purpose here today to address my mandate in the CISPES investigation.

Questions concerning the efficacy of the way the bureau does business as far as the Inspection Division or any other alternative means are probably left best to the Director of the FBI at another point in time. Or for perhaps another hearing.

Senator SPECTER. Well, one question may arise as to whether there was sufficient oversight by the top level of the FBI. I cited, in my opening statement, a memorandum which was addressed from the Denver field office to the Director. And I understand that just because it is addressed to the Director, it doesn't necessarily mean that the Director sees it.

But one of the issues which you have to pass judgment on, I would think, would be what is the appropriate level of FBI direction? I take it from what you said that you would have no hesitancy in speaking very freely and very forcefully if you found that any of the internal mechanisms of the FBI required revision or correction.

Mr. GAVIN. That's correct.

Senator SPECTER. Just one last question, Mr. Gavin. Director Sessions provided a statement to the committee, I believe on February

2 of this year. It is an undated statement but I believe that statement was made on February 2.

Do you know if that statement was prepared before or after Judge Sessions decided to authorize your investigation of the way the FBI handled CISPES?

Mr. GAVIN. I haven't the slightest idea, Senator.

Senator SPECTER. Have you read the statement?

Mr. GAVIN. No, I have not.

Senator SPECTER. Well, I refer to the statement because it contains a justification for what the FBI has done., And that may be exactly right. But as I read the statement, it does not raise any questions about Judge Sessions' interest in pursuing an investigation. I would commend that to your reading and will rely upon your best strenuous efforts in your inquiry.

Thank you very much, Mr. Chairman.

Chairman BOREN. Thank you, Senator Specter.

Senator Murkowski?

Senator MURKOWSKI. Thank you, Mr. Chairman.

On the bases of your preliminary investigations, Mr. Gavin, do you believe that the CISPES investigation was at all unusual compared to the normal manner in which the FBI conducts its investigations and if it was unusual, in what ways?

Mr. GAVIN. That would call, Senator, for a conclusionary response which I'm not really prepared to give at this particular point in time. I don't think I have enough of the facts and enough investigation has been conducted by me to offer opinions at this particular point in time.

Senator MURKOWSKI. Well do you anticipate, Mr. Gavin, being able to provide the committee with that kind of evaluation after you have finished your examination?

Mr. GAVIN. When I have completed, my investigation will be presented to Director Sessions, and I think he will make that decision at that particular point in time as to how to handle it in relation to this committee.

Senator MURKOWSKI. Well, of course my question is to try to delve into an obvious concern of this committee, and that concerns the type of investigation that the FBI saw fit to initiate. And obviously the FBI is charged with the responsibility of initiating investigations based on its own evaluation of the evidence. And I guess I'm a little surprised that you, sir, are unable to tell us in general terms whether this is a normal run-of-the-mill type activity of the FBI or if indeed it is substantially a departure.

And furthermore, it appears that we're going to have to rely on the Director of the FBI to give us the answers as opposed to yourself which kind of detracts from what I assume is basically your obligation to provide an objective point of view within the FBI on procedures, policies, and so forth.

Mr. GAVIN. I don't see where it detracts, Senator, from my objectivity. I think that the question——

Senator MURKOWSKI. Well you're not giving us any objectivity.

Mr. GAVIN. Because it is premature at this particular point in time for me to offer some conclusions——

Senator MURKOWSKI. Well you said you wouldn't be able to give it to us. You'd give it to the Director, and so we have to rely on his interpretation of your report, which raises a question of objectivity.

Mr. GAVIN. I think that perhaps at the opening—in my opening statement I advised this committee that the investigation I'm conducting right now is at the direction of the Director of the FBI. He has the final say as to what to do with it. And I think that's only fair to the Director of the FBI.

For me to usurp that is not correct.

Senator MURKOWSKI. Well, I think in reply to the questions by Senator Specter, you indicated a degree of independence which I would anticipate would be associated with your responsibility and now you are leaving this Senator with the impression that your own flexibility is somewhat limited and you are doing this under the direction of the Director as opposed to your own objective evaluation.

And I must say, I'm somewhat disappointed that we seem to be going away from the previous assurance that you have the flexibility to reach your own conclusions and to communicate these conclusions to us. Instead you must consult the Director before evaluating whether this is simply a normal investigation or an abnormal one.

Mr. GAVIN. I think we're talking the difference between format and content, Senator.

I have free rein for the content and the conduct of this investigation given to me by Director Sessions. The format as to its presentation rests with the Director of the FBI. I have complete independence in running this investigation.

Senator MURKOWSKI. Well I would assume, Mr. Gavin, that my question is broad enough and general enough that I just anticipated that you'd respond by saying, yes, it's a general investigation of a type that is done all the time within the FBI or it is somewhat unusual.

Mr. GAVIN. I think that might be a question, Senator, that might best be directed at Mr. Revell who sees these types of investigations all the time. As I said, we're in a preliminary phase of the investigation of this particular case and to say that it is or is not, I don't have the frame of reference at this point in time. And that's something that I'll have to look at to see if it is or is not.

Mr. Revell may have an idea, having seen a number of these cases.

Senator MURKOWSKI. Are you familiar with the interim public report on the Committee in Solidarity with the People of El Salvador which is dated February 22, U.S. Department of Justice, Federal Bureau of Investigation?

Mr. GAVIN. Is this the paper that has been presented to the committee today?

Senator MURKOWSKI. Yes.

Mr. GAVIN. Yes, sir. I'm familiar with it.

Senator MURKOWSKI. I assume, Mr. Chairman, that this particular document has been released and is a public document?

Chairman BOREN. It is a public document.

Senator MURKOWSKI. Mr. Gavin, you've seen this document?

Mr. GAVIN. Yes, sir. I have.

Senator MURKOWSKI. I note on page 2, a reference after achieving official organizational structure in October 1980, CISPES had as one of its principal objectives, according to its own literature, support of Frente Democratico Revolucionario, the Democratic Revolutionary Front or the FDR. And that the Frente Farabundo Marti de Liberacion Nacional—I didn't do very well in Spanish as you can tell—the FMLN is comprised of 5 guerrilla groups and is the organization principally responsible for anti-government military terrorist activity directed against the Salvadoran government and U.S. interests in El Salvador. Such terrorist activities including bombings, kidnappings, assaults and assassinations and by its own claim the May 25, 1983 assassination of Navy Lieutenant Commander Albert A. Schaufelberger, who was serving as the U.S. Military Advisor in El Salvador.

We are here to ask you why was an investigation begun on CISPES. There seems to be in this particular document an awful lot of justification for initiating an investigation, if indeed the references are factual.

What did the FBI believe were the ties between CISPES and the El Salvador guerrillas, when it initiated such an investigation?

Mr. GAVIN. Senator, that's a question that is best asked of Mr. Revell and the Criminal Investigative Division; that's his document to be presented to this committee.

Senator MURKOWSKI. All right. My last question. What do you intend to communicate specifically to this committee in your capacity?

Mr. GAVIN. The final communication you're referring to in the long run?

Senator MURKOWSKI. You are here to advise us on your evaluation independently or dependently as the case may be, depending as how you see your particular obligation to your Director. I'm curious to know what we might expect from you and your office with regard to the basis for this investigation, sir?

Mr. GAVIN. I will prepare a report detailing the findings of my investigation and making recommendations for Director Sessions. And I have no reason to believe that Director Sessions will not appear and discuss that report with this committee.

Senator MURKOWSKI. All right. So you are not going to do anything direct to this committee?

Mr. GAVIN. I don't know. Director Sessions may ask me to come and do it. But that's——

Senator MURKOWSKI. But right now you are prepared to do anything direct for this committee?

Mr. GAVIN. No, Senator. Not today. I haven't conducted my investigation.

Chairman BOREN. Senator Murkowski, we did have the commitment from the Director, when he was before the committee on February 2, one that he would commence this internal inquiry. The next day, on February 3, he commenced this internal investigation which put Mr. Gavin as chief of the bureau investigation in charge.

The Director then committed to us that after he received Mr. Gavin's report, he would then make a full report to us which would include its findings.

So we would anticipate that, in the normal course of matters, Mr. Gavin would complete his own internal investigation through the chain of command to Director Sessions. And then Director Sessions would share the findings, with his own recommendations and his own interpretation of it, as well, with the committee at the end of the procedure.

Senator Metzenbaum?

Senator METZENBAUM. Mr. Gavin, you are chief of the Inspections Division of the FBI?

Mr. GAVIN. Yes, Senator.

Senator METZENBAUM. How long have you held that position?

Mr. GAVIN. Since November of 1986.

Senator METZENBAUM. And what does that role encompass?

Mr. GAVIN. It's the division of the FBI responsible directly to the Director that has the responsibility for conducting inspections of the FBI as one entity, for conducting internal investigations as they refer to the Office of Professional Responsibility as a second entity. And as the third entity, it has charge of the Office of Program and Evaluations, that projects where we are, what we've done, and where we might be going. Those are the three entities within the Inspection Division.

Senator METZENBAUM. Since you have been in your present position, without asking you to make any indentification, how many such investigations of the internal responsibilities of the FBI have you conducted, approximately?

Mr. GAVIN. That's kind of broad, Senator, perhaps you can enlighten me on exactly what you mean by that question. How many internal investigations?

Senator METZENBAUM. I'm told that your position is somewhat similar to that of an Inspector General.

Mr. GAVIN. Yes, sir.

Senator METZENBAUM. And the Inspector General, in most of the government agencies that have them, would be conducting investigations concerning the conduct of his or her agency.

Mr. GAVIN. Correct.

Senator METZENBAUM. My question is, does this CISPES investigation come about just because the Congress has raised some questions about it; and are there other areas where the FBI is investigating its own activities and questioning the propriety of its conduct?

Mr. GAVIN. The FBI is in a constant process of investigating its own activities and evaluating the conduct of its employees. Yes, sir, it is.

Senator METZENBAUM. And now I'll restate my question. About how many of those investigations have you conducted concerning organizational activities—not concerning the activity of a particular FBI agent or a particular office but rather organizational activities?

Mr. GAVIN. I can't think of—if you want to refer to investigations similar to the CISPES investigation that I'm doing, this is the first one that I have so conducted in a year.

Senator METZENBAUM. Have any questions been raised with reference to the FBI's conduct in connection with the investigation of other organizations?

Mr. GAVIN. Had any questions been raised to the nature of responsibility by employees or alleging employee misconduct or criminal activity on the part of employees of the FBI, I would be responsible for that.

Has it happened in any other major cases? I—will I look at the whole case? As I said, CISPES is the only investigation I've had of this nature in the year that I've been on the job. A little better than a year.

Senator METZENBAUM. And is it the fact that this one came about only after the Director had issued a white paper in connection with the matter and then came before this committee, and that this committee's inquiries prompted him to indicate that there would thereafter be this investigation by you?

Mr. GAVIN. There has been other internal review of the CISPES case either in segments or individuals. Did this committee prompt the mandate that I now have? I would suspect that it probably did.

Senator METZENBAUM. Turning to another matter, let me ask you: will you extend your investigation to include the May, 1987, effort by the Cincinnati field office to learn more about Professor Knitter, since the CISPES investigation was what set them off, even though the FBI apparently continued to monitor dissent after the CISPES case was closed?

Mr. GAVIN. In this particular case, what we will do, what my investigation will do, is go where and look at whatever we deem necessary to look at. Whether or not this is going to be an integral part of it, Senator, I can't tell you at this particular point in time because I don't know any of the details that you are talking about.

I would have to review your concerns. I can only assure you that the concerns of this committee will be taken into consideration during the course of my investigation.

Senator METZENBAUM. Let me make it clear that the investigation continued of a professor at this Catholic university after it had been indicated that the CISPES investigation was closed. And this professor's activities—as I understand at least from all I've been able to learn, and I may be wrong—had to do with the CISPES organization. The continued monitoring of his activities and the denial of those activities by the local FBI office caused this Senator to have some real concerns, and I know that many in Ohio share that concern. I would guess many in the country do, as well.

So I hope that you will inquire as to why this individual's activities continued to be monitored after the CISPES investigation was closed.

Mr. GAVIN. Without making a comment, Senator, to specific activities during the course of the investigation, I can assure you that the concern of this committee will be considered during the course of it.

Senator METZENBAUM. Now let me ask you, to change the subject a bit: will all the FBI files be available to you, or will you be able to see only that material that has been sent to us?

Mr. GAVIN. No, Senator. I have access to every single file at headquarters and in the field relating to the CISPES matter in an unredacted form.

Senator METZENBAUM. On an unredacted basis?

Mr. GAVIN. That's correct. Yes, sir.

Senator METZENBAUM. Can you explain for me who makes the determination as to which portions of which communications get redacted? Because I'm looking at one here in front of me that first has a SECRET mark on it, then there's an x through that—which indicates that first somebody decided it was SECRET, then somebody else decided it wasn't SECRET.

Then I see two major black redactions and then it goes on to state, "this document contains neither recommendations nor conclusions of the FBI, is the property of the FBI and is loaned to your agency. It and its contents are not to be distributed outside your agency."

I would guess that those two paragraphs contained substantive material. But it is my understanding that in the main the only material that is redacted is where the source is indicated. Am I wrong about that? Is there further redacting that occurs and, if so, who makes that determination and on what basis?

Mr. GARVIN. I believe that is not totally correct. Informant information is eliminated but I think there is other information that is eliminated as well.

I think for the answer to that question which I don't have at my fingertips I would—as to who does it, and why it's done and under what guide—the specific guidelines for redacting that material, I would have to turn to somebody much more knowledgeable in the matter than I am. But I do have access to the unredacted files.

Senator METZENBAUM. I thank you, Mr. Chairman.

Senator COHEN. Senator DeConcini?

Senator DECONCINI. Thank you, Mr. Chairman.

Mr. Revell, if this question is correctly addressed to you, please correct me if otherwise. Did this investigation focus on determining whether support was given by CISPES leaders to further terrorist aims of the Salvadoran rebels, the FMLN, as suggested by Director Sessions at his recent press conference?

Senator COHEN. Senator DeConcini, we were going to define our questions to Mr. Gavin first and then turn to Mr. Revell.

Senator DECONCINI. Well, Mr. Chairman. I have to leave. This is all the time I have. If I can't ask him, I'll have to forego it then. Thank you.

Senator COHEN. Well, ask the one.

Senator BRADLEY. You did it again, Dennis. You pulled if off again.

Senator DECONCINI. I only have a little bit of time.

Mr. REVELL. Senator, my opening statement will go into that and indeed the majority of our testimony. I have two colleagues who have reviewed every headquarters document that will pertain to that.

The predication for the international terrorism investigation under FCI guidelines was indeed to determine if there were certain elements within the CISPES organization that were controlled by, influenced by or supportive of the FMLN in El Salvador which under the FCI guidelines and the FISA statute constitute a foreign power engaged in international terrorism.

Senator DECONCINI. Can you give us that evidence?

Mr. REVELL. The predicating document has been provided to the committee. The white paper addresses it in unclassified form and

we will be happy to appear in closed session and go into all aspects of that predication.

Senator DECONCINI. Thank you.

Now, Mr. Gavin, maybe this one is one that you can answer. Do you know why the Tucson Human Rights Committee was investigated?

Mr. REVELL. Once again, Senator. That's not within the realm of my appearance here this morning.

Senator DECONCINI. Okay. How about you Mr. Revell?

Mr. REVELL. Mr. Pomerantz, who is here with me has reviewed the documents on that. I believe that he has a basis for that. Unfortunately, part can be stated in public and part is still classified because of the manner in which the information was received. He'll be able to give you a partial answer on that.

Senator DECONCINI. All right. What concerns me is why this investigation continued even after the Phoenix FBI office recommended that it be closed. If my information is correct.

Mr. REVELL. I don't believe that it did.

Senator DECONCINI. You don't? OK. Can that be substantiated, number one, whether or not the Phoenix FBI Office did make any such recommendations?

Mr. REVELL. Senator, they were not instructed to continue. They were instructed to furnish the results of their investigation to date and then discontinue. So it was not continued.

Mr. REVELL. So it was not continued. So then the question that I'd like answered is, if you can furnish this information sometime to me, is why was the Tucson Human Rights Committee investigated? And particularly, why after the FBI office in Phoenix recommended that no further investigation go on?

Mr. REVELL. Again, I would have to defer to Mr. Pomerantz who has reviewed the documents and is prepared to answer that question.

Senator DECONCINI. Very good.

Mr. Gavin, do you know if the supervision of informer Frank Varelli by special agent Flanagan was ever evaluated internally?

Mr. GAVIN. Yes, sir. It has been.

Senator DECONCINI. It has been. And how was the information provided verified? How do you go about verifying information of that kind? Do you go back to the sources that Mr. Varelli used?

Mr. GAVIN. There are a number of ways of doing that, Senator. Of course, dialogue with Mr. Varelli would be a desirable way, but heretofore impossible.

Senator DECONCINI. Is that what happened here?

Mr. GAVIN. Partially yes. Partially no. To go too much further into the specifics, ask for a conclusionary statement at this particular point in time, there is still more investigation to be conducted, so I don't think I can give you a good full answer.

Senator DECONCINI. Is that what's ongoing now?

Mr. GAVIN. That's my function now to look at that entire CISPES investigation, to include the sources of information and the conduct of the investigation itself.

Senator DECONCINI. Now is part of your entire investigation going to specifically determine what the reasons were for starting this investigation? Will it be determined if organizations investigat-

ed were involved or helping undocumented Salvadorans in the United States?

Mr. GAVIN. My investigation will include reasons for actions on the part of the FBI in this particular case.

Senator DECONCINI. Thank you.

Mr. Chairman, thank you for your indulgence.

Senator COHEN. Senator Bradley.

Senator BRADLEY. Thank you very much, Mr. Chairman.

I understand that there was a round of opening statements prior to my arrival. So if you would allow me, I would like to make a brief statement and then ask the questions in my turn. It will be very brief.

As you know, I've been very troubled by the notion that the Administration has ridden rough shod over the civil liberties of innocent Americans. And once again, I think the FBI's reputation is on the line. And I think that it serves all of our interests to get to the bottom of it. And I expect this committee to get to the bottom of it.

And I don't think, though, that we should limit our inquiry to simply the internal workings of the FBI. On the contrary, I think that what we should do is we should begin by looking at the basis for the investigation, the basis upon which it was initiated in the first place. What was the intelligence that the FBI relied upon? How reliable was it? How thoroughly was it screened and reviewed? Was it sufficient to justify the scope, duration, and methods that the investigation followed? What was the role of the Justice Department and the White House, if any?

And, Mr. Chairman, I would urge that the committee look beyond the incomplete documentation that has been provided as of this moment. And frankly, I don't see how we can evaluate what the FBI did unless we have evaluated the intelligence that launched the investigation in the first place.

And I would just simply like to reinforce the depth of my concern here. It is simply unacceptable for the FBI or any other agency to conduct sweeping investigations of American citizens except in the most extraordinary circumstances where there is a clear and present danger to the national security.

So, Mr. Chairman, I hope this committee will pursue these questions: to evaluate the intelligence that ostensibly legitimized the investigation in the first place; to determine whether its scope and duration were justified in light of the nature and the reliability of that intelligence; and to hold accountable all those who were proved to have committed abuses, if any.

I think that only if we do that will we be able to go to the American people and say there is a basis for trust in their government. And I frankly think only then can the FBI know that it has the wholehearted support of the American people in combatting the real threats to their security.

So it seems to me there are two broad questions here. One is whether, once an investigation began, should it have been stopped sooner? But to me the more important question is whether an investigation should have commenced in the first place, based upon the intelligence that was available.

Mr. Chairman, I have spoken to you about this and you have assured me that we are going to pursue the point by investigating

the intelligence basis. And I look at this as simply an opening process. We've been given an awful lot of documentation. Even more last night, I understand, more than anybody could have possibly digested prior to this meeting. And I would expect that it will take a while to thoroughly look at all of the documentation to get at the two questions that I raised.

But, with that said, let me ask Mr. Gavin just one or two questions.

Chairman BOREN. We will look both at the policy question as you've raised it, as to whether the policy is sufficient—the guidelines under which we are operating are sufficient—to protect against improper opening of an investigation of this kind, and second, whether or not the procedures for assuring that the Bureau stays within the guidelines are also being properly enforced. And we did commence this investigation inquiry under Rule 6 as we've entered into the record. And we will pursue it as long as we need to pursue it to make sure that we've done the job very, very thoroughly.

Senator BRADLEY. All right.

Now, Mr. Gavin, when do you expect to have completed your investigation?

Mr. GAVIN. As I said before, Senator, that's kind of a difficult projection to make based on the scope of the investigation. I can't tell you right now where it's going to go. I would hope to have some product within 90 days. But I can't—I would not like to be held to that timeframe. As you well know, based on your own comments, the volume of information that you have received is tremendous. I have all the unredacted copies of the information you've received. So it's, I won't say it's doubled, I won't say you have half, but there will be a large volume of material for me to look at too.

In addition, perhaps to cover any additional investigation which may come out of interviews of individuals, exploring avenues of concern, subsequent to analyzing all that material.

Senator BRADLEY. Now, as I understand your authority, you do have authority to interview the former Director?

Mr. GAVIN. That's correct.

Senator BRADLEY. Do you have the authority to interview the current Director?

Mr. GAVIN. That's correct.

Senator BRADLEY. Do you have the authority to interview the Attorney General?

Mr. GAVIN. That's correct.

Senator BRADLEY. Do you have the authority to interview any person at the White House that you would choose to—with the exception of the President, obviously?

Mr. GAVIN. Should I have some reason for it, correct.

Senator BRADLEY. All right. Well, we'll look forward to your material.

Mr. GAVIN. Thank you, Senator.

Senator BRADLEY. Thank you very much.

Chairman BOREN. Thank you very much, Senator Bradley.

Let me ask just one last question.

Mr. Gavin, have you had direct conversations with Director Sessions about the opening of this investigation and how you should proceed?

Mr. GAVIN. Have I discussed directly with him?

Chairman BOREN. Yes, sir.

Mr. GAVIN. On the third of February of this year.

Chairman BOREN. That was a personal conversation with the Director?

Mr. GAVIN. Personal conversation, that's correct.

Chairman BOREN. What direction did he give you in that personal conversation?

Mr. GAVIN. Director Sessions was pretty firm in his commitment that no stone would be left unturned, that whatever it took to resolve this issue would be done by my investigation.

I've heard less strong statements. And this one was a pretty strong one, pretty committed statement to arrive at a conclusion.

Chairman BOREN. Do you feel as a result of that conversation that you have will have his support wherever your investigation might lead you, even if it meant stepping on sensitive toes?

Mr. GAVIN. I certainly do.

Chairman BOREN. Thank you very much, Mr. Gavin.

We understand, again, that at this point in time you can give preliminary answers; more to the process that you intend to follow rather than to the substance of the matter at this point. I know Mr. Revell has welcomed the fact that you have constrained yourself to process and left these substantive issues now for us to examine with him.

Mr. Reveil, we'll turn to you at this point and be glad to hear any opening comments that you might have, and then we will turn to members of the committee for their questions.

STATEMENT OF OLIVER B. "BUCK" REVELL, EXECUTIVE ASSISTANT DIRECTOR OF INVESTIGATION, FEDERAL BUREAU OF INVESTIGATION

Mr. REVELL. As usual, Mr. Gavin leaves the fun part to me.

Senator, before I go into my statement, I would like to reiterate, I know Senator Metzenbaum who is not here indicated his disappointment that Director Sessions is not here.

As you know, in calling for this meeting for this particular hearing, the bureau indicated to you that we were not really prepared to come forward with a definitive statement. And at your request, we are here on an interim basis.

That is not because the Director is not willing to testify. He simply is not prepared to testify and to be responsive to your area of concern.

That is also to some degree my limitation. I'm in charge of all investigative activities for the bureau. But obviously I cannot supervise 170,000 cases. I will give you in my statement the information as I know it. I have asked Mr. Pomerantz, who is chief of the Counterterrorism Section, to look at the specific doumentation because he is familiar with the standards and the procedures and policy of the terrrorism program and he will be able to comment

on the specific documentation that he has at this point, which includes the headquarter's holdings.

I've asked Mr. Ricks, who is the Deputy Assistant Director who has oversight over the counterterrorism program as well as civil rights and general criminal programs, to carefully look at the authorizations and the guidelines and the issues in relation to that and in comparison with the documentation.

So, together as a team, we hope to give you an up-to-date but unfortunately still an incomplete report. But it's not for lack of trying. We were working until 4 o'clock this morning trying to be prepared to respond to as many of your questions as possible.

Let me start off by saying I hope that we can put this matter in a proper context. The FBI's counterterrorism program is sound and it is based on a solid foundation, in conformance with both the spirit and letter of the law. You have heard and read many things which have been incompletely, inaccurately, and unfairly reported in the media concerning the FBI's investigation of a group known as the Committee in Solidarity with the People of El Salvador, or CISPES.

Before delving into the CISPES case itself, allow me to describe how the FBI has been able to achieve its current level of success in our counterterrorism program.

This committee is of course extremely well aware that during the 1960's and 1970's the people of the United States were subjected to a number of terrorist incidents which included, for instance, the murder of a research student at the University of Wisconsin by a bombing, numerous other bombings of law enforcement and corporate facilities. And we all well remember the 1972 incident in which members of the Black September Organization, a Palestinian terrorist group, demonstrated at the Summer Olympics in Munich, Germany that they had both the propensity and capability to conduct terrorist acts outside the Middle East. During the 1970's, as the number of terrorist incidents grew in our nation, we also saw a sharp increase in attacks on Americans and American interests abroad by international terrorist groups. These attacks took place in many parts of the world to include the Middle East as well as both South and Central America.

During 1976, guidelines were established by then Attorney General Levi and were promulgated to set parameters for FBI investigations, to include counterintelligence and counterterrorism investigations. For the first time in our history, the FBI not only had a mandate to ensure the welfare of our citizens, but also Attorney General guidelines which would govern the conduct of these investigations.

And I might point out that of course those guidelines were furnished to the various congressional oversight committees at the time that they were instituted, and all changes have been provided to the various oversight committees, including this one.

Congress also recognized the emerging threat of terrorism and in 1981 created within the committee on the Judiciary, the Subcommittee on Security and Terrorism, to monitor these issues and to ensure that those agencies of government responsible for dealing with terrorism were performing in a manner sufficient to meet the threat. From its creation in 1981 until it was abolished in early

1987, the subcommittee, chaired by former Senator Jeremiah Denton, had oversight responsibilities for the FBI on behalf of the Senate. The Director William H. Webster and other FBI officials, including myself, testified frequently before this subcommittee in both closed and open sessions on the bureau's responsibilities for combating terrorism.

The subcommittee was in frequent contact with the FBI and often requested detailed information from Director Webster regarding the FBI's investigations of groups suspected of engaging in domestic terrorism, as well as those believed to have a connection with either international terrorist organizations or hostile foreign nations.

In March 1983, Senator Denton's subcommittee posed questions to then Director Webster which resulted from testimony at the FBI oversight and authorization hearing on February 2, 1983. The subcommittee sought information regarding how the FBI's capabilities within its counterterrorism section had been enhanced; how the FBI's counterterrorism analytical capabilities had been strengthened since 1978; why the FBI had no program to monitor or read publications of suspected terrorists and violent or subversive groups; why the FBI believed it was prohibited from placing into FBI files public documents published by such groups; and how the FBI had improved intelligence gathering on domestic terrorist organizations.

The above are merely a few examples of the numerous inquiries received by the FBI from congressional committees regarding the investigations and intelligence gathering that the FBI was conducting, or some thought should be conducting, in order to become and remain aware of activities of domestic terrorist organizations, and groups affiliated with international terrorist organizations and/or hostile foreign nations. As Director Sessions stated to this committee, which of course was closed, on February 2, 1988, we are indeed accountable for our investigations. However, the FBI has been, and continues to be, criticized for allegedly conducting, at the same time, too many and too few investigations in these areas.

Although the FBI's statistical base to record numbers of terrorist incidents in the United States was not fully operational until 1982, we estimate that terrorist incidents in this country and Puerto Rico were well in excess of 100 per year during the 70's. In fact, there were 112 recorded incidents in 1977. These numbers include incidents perpetrated by both domestic and international terrorist organizations.

In 1982, former Director Webster, in response to this widely recognized and growing problem, designated terrorism to be a national priority program for the FBI. As such, it was elevated to a status on a par with white-collar crime, organized crime and foreign counterintelligence investigations.

In May of 1982, I assumed responsibility for the Criminal Investigative Division. I did an assessment of our counterterrorism program after assuming that responsibility. I had numerous discussions with Judge Webster as to the status of our capability. At that time we were facing the Olympics in Los Angeles in 1984. We were also at a very high level of terrorist activity in both Puerto Rico and along the eastern coast of the United States. We had suffered

bombings at military installations, international business facilities and corporations, in relationship to the various policies of the United States. In other words, groups that espoused a political belief were taking direct action through bombs and other direct terrorist incidents.

It was my belief at the time that we had insufficient analytical capability and that we had insufficient focus of our investigations. We were essentially conducting our investigations on a case by case basis rather than correlating the information to have a more thorough analysis of the overall threat. When I presented to Judge Webster the proposition that terrorism be elevated to a national program priority within the FBI, and the purpose for that, he was in quick agreement. He had expressed to me on any number of occasions his concern that our investigations be sharply focused, that they concern themselves with criminal activities or prohibited intelligence activities, and that we not squander our resources nor engage in activities which would bring the bureau into disrepute. That obviously was good advice, and that is exactly what we have attempted to do.

Statistically, the counterterrorism program has been extremely successful. Between 1980 and 1982 there were 122 incidents in the United States, with 51 occurring in 1982. From that point on, the numbers generally declined—to 31 in 1983, 13 in 1984, and 7 in 1985. During 1986, we recorded 17 incidents, 9 of which were bombings or attempted bombings in Puerto Rico. So far in 1987 we have documented no terrorist actions or incidents; however, we are analyzing information which may change the figures for 1986 and 1987. Additionally, we have not had the commission of a terrorist incident in this country by a member of an international terrorist organization since 1983 despite the highly publicized events these groups have orchestrated abroad during these same years.

In addition, through intelligence collection—and let me emphasize, intelligence collection—cooperation and diligent investigation, the FBI has been able to prevent at least 53 incidents since 1982 that, if not detected, would have resulted in substantial numbers of casualties. And by that I mean hundreds of casualties in the United States. Let me illustrate and highlight some of these cases.

During 1983, the FBI developed information that several pro-Khomeini students—in the United States, of course—were involved in a plan to fire bomb a Seattle, Washington theater while an Iranian singing group performed. This plan, which could have resulted in the deaths of several hundred theatergoers, was interdicted when these Iranian activists were surveilled and then interviewed by the FBI and local law enforcement authorities prior to the proposed fire bombing. They had in hand not only the plans, but also the explosives and the gasoline to carry out these fire bombings. And they intended to lock and bar the doors, preventing exiting of the theater by those inside. The students had planned to attack the theater because a large number of pro-Shah Iranians were expected to attend this performance.

During January 1985 eight individuals were indicted in Miami, Florida, following their arrest by the FBI in connection with a plan to stage a coup against the government of Honduras which was to include the assassination of the incumbent president of Honduras,

Roberto Suazo. Eight convictions as well as the seizure of a substantial amount of cocaine resulted from this investigation.

In May 1985, based on information developed by the FBI, 5 Sikhs were arrested in New Orleans. I should point out, these were U.S. persons. They were of the Sikh religious persuasion, but they were U.S. persons, and therefore the activities of U.S. persons, of course, also fall within the parameter of international terrorism. They were arrested in New Orleans, Louisiana, on a variety of charges. Our investigation subsequently determined that they had planned to assassinate the Chief Minister of the Indian State of Haryana during his visit to New Orleans as well as Prime Minister Rajiv Gandhi during his visit to the United States. To date, 4 of 5 of these individuals have been convicted.

In May of 1986, the Royal Canadian Mounted Police arrested 5 Sikhs who conspired to place a bomb aboard an Air India flight at JFK airport in New York. Information developed by the RCMP and the FBI, in a joint effort, led to these arrests and aborted what could have been a devastating terrorist incident. This was a jumbo jet and normally it would hold 300 to 400 people. Two of the five have been successfully prosecuted in Canada and convicted. Sikh terrorists are also suspected in the June 1985 Air India disaster off the coast of Ireland which claimed 329 lives and an explosion in the baggage area of Tokyo's Narita Airport which demonstrated that these terrorists are willing and capable of carrying out extremely violent criminal activity.

During 1986, the FBI, in concert with the Customs Service, developed information that 14 individuals had attempted to recruit persons in the United States who would travel to the country of Surinname for the purpose of overthrowing that government. As a result they were arrested and charged with violations of the Neutrality and Arms Export Acts. All 14 persons were convicted in this case.

In December of 1986, the FBI received information that there was a plot to assassinate Nicaraguan President Daniel Ortega. Information developed during the investigation indicated that two individuals attempted to recruit people with a military background to carry out this mission and that they solicited funds and/or investors for a proposed venture to assassinate President Ortega. The plot was thwarted as a result of FBI investigation during 1987, and one of those arrested has been convicted.

There have been a number of instances where international terrorists have used U.S. persons to carry out terrorist activities in the United States. One example is the May 1982 attempt by individuals belonging to the Armenian Secret Army for the Liberation of Armenia, better known as ASALA, who were observed by the FBI, while under surveillance, attempting to place a bomb at the Air Canada cargo entry area at Los Angeles International Airport. As a result of the FBI's investigation, all three individuals were arrested and subsequently convicted. And of course, the bomb did not detonate.

During 1985, individuals belonging to the El Rukn Street Gang, an organized crime group specifically involved in violence-prone activities, with links to the Libyan Government, were arrested by the FBI for firearms violations as they attempted to purchase a rocket which was allegedly to be used—I shouldn't say allegedly—on their

own statements, which were of course wiretapped under court order, they indicated that they intended to use this missile to carry out the terrorist act of shooting down an aircraft, a passenger carrying aircraft, taking off from Chicago's O'Hare Airport. Five individuals belonging to this group have been convicted of a number of criminal violations in connection with this and other incidents. Both of these situations indicate the potential for international terrorist organizations to use U.S. individuals in efforts to engage in terrorist activity in the United States.

There was also a situation that occurred right here in 1980 in Bethesda, Maryland, which I am sure that members of this committee will recall. There was an individual in the United States at that time by the name of Ali Akbar Tabatabai, a former minister and representative of the Iranian government to the United Nations, who was living as an exile here in the United States. In May of 1980, an individual dressed as a postman and driving a postal van went to his door, knocked on the door, opened fire on him and killed him on his doorstep. That individual, who we identified within 24 hours, was an individual by the name of David Belfield. He had adopted the Moslem name of Daud Salihoudin. Within 36 hours, Mr. Belfield was in Tehran, and is today an instructor for the Revolutionary Guards in Iran. Again, an American used by an international terrorist apparatus for the purposes of carrying out terrorism.

Now, this leads me directly into the CISPES matter, which is at the heart of the concern of the committee's hearing.

Activities pertaining to CISPES have been previously presented before Congress. You indicated earlier that in fact this committee had received notification of the investigation of CISPES with the normal notification that we give to this committee of the groups under investigation.

I would like to come off my prepared statement to point out that we are willing at any time, Mr. Chairman, to come up and specify those groups under investigation, both under the domestic and the international guidelines, and to substantiate the predication for the investigations. Since this situation has come to light, I have personally reviewed all of the international terrorist investigations, and I am quite satisfied that they are strongly predicated and meet all the requirements of the Attorney General guidelines, and we will certainly be willing to address that with the committee.

Now, as I said, the activities of CISPES have been previously presented to the Congress, and in fact, in July, 1982, in hearings before the House Permanent Select Committee on Intelligence, then FBI Assistant Director Ed O'Malley, provided testimony concerning Soviet active measures. This term applies to active measures clandestinely undertaken by the Soviet Union to, among other things, influence the political processes of other countries. Soviet active measures against the United States include clandestine efforts to reinforce and mobilize domestic opposition to U.S. Government policies that are inimical to Soviet interests.

One of the Soviets' very successful active measures tactics has been the circulation of forged U.S. documents. One such forgery was a supposed Department of State "dissent" paper which claimed to represent the views of certain foreign policy experts within the

State Department. CISPES was, according to testimony, involved in the distribution of this Soviet forgery to the U.S. media. Furthermore, Mr. O'Malley testified, the thrust of the forged document distributed by CISPES was that policies of the Carter Administration and statements by the Reagan transition team were going to lead the United States into military involvement in Central America and El Salvador.

According to its own literature, CISPES was established as a result of the U.S. National Conference in Solidarity with the Salvadoran People held in October, 1980, in Washington, D.C., and Los Angeles, California. CISPES publicly claimed to have been created to provide international support to the anti-government movement in El Salvador. According to information available to the FBI, CISPES is believed to have been established with assistance of the Communist Party USA (CPUSA), the U.S. Peace Council (USPC) and the Salvadoran Communist Party (PCS). The believed involvement of the CPUSA in the formation of CISPES is significant inasmuch as the CPUSA has historically been one of the most loyal pro-Soviet Communist parties in the world and has received substantial financial support from the Soviet Union. More importantly, the CPUSA continues to receive direction and guidance from the International Department, Central Committee, of the Communist Party of the Soviet Union.

After achieving official organizational status in October of 1980, CISPES had as one of its principal objectives, according to its own literature, support of the FDR, the Democratic Revolutionary Front, and the FMLN, or the Farabundo Marti National Liberation Front in El Salvador. The FMLN is composed of 5 guerrilla groups and is the organization principally responsible for anti-government military and terrorist activity directed against the Salvadoran Government and U.S. interests in El Salvador.

The documented terrorist activities of the FMLN have included bombings, kidnapings, assaults and assassinations. The FMLN has also taken credit for the assassination of U.S. military attache in San Salvador, Lieutenant Commander Albert A. Schaufelberger. In addition, we believe they were responsible for the killing of our Marine embassy guards, or at least were a part of that process in 1985. In fact, the Washington Post reported on February 18, 1988 that FMLN rebels attacked a city in El Salvador killing 15 people, including 4 children. Another Washington Post report of February 21st—this past weekend—detailed a plan by the FMLN to "eliminate" U.S. military advisors in El Salvador.

An investigation of CISPES was first opened by the FBI on June 25, 1981, when the registration unit of the Department of Justice requested a check of FBI indices concerning the CISPES organization. The FBI responded on August 25, 1981 and furnished the department with two items of information which had been reported to the FBI concerning CISPES and an individual by the name of Farid Handal. On August 27, 1981 the Department of Justice requested that the FBI conduct a preliminary investigation to determine if CISPES was required to register under the Foreign Agents Registration Act. The limited investigation was conducted by 5 FBI field offices and was opened by the FBI on September 3, 1981 and was closed on February 23, 1982.

On March 30, 1983 the Counterterrorism Section at FBI headquarters authorized an investigation of CISPES citing that CISPES and some of its members are or may be engaged in international terrorism activities and activities in preparation thereof, or knowingly aiding and abetting the terrorists in El Salvador and in other countries in the conduct of international terrorist activities. FBI headquarters noted in this opening communication that this investigation was not concerned with the exercise of rights guaranteed by the Constitution, but rather with the involvement of the CISPES organization in international terrorism as it affected the El Salvadoran Government, and the collection of foreign intelligence and counterintelligence information as it related to the international terrorism aspects of the investigation. Summary letterhead memoranda were prepared on June 22, 1983, April 2, 1984, June 29, 1984, and March 4, 1985, and disseminated to the Department of Justice.

During this same time period that the case was open, this investigation received oversight from the Counterterrorism Section of FBI headquarters, field supervisory personnel and the Office of Intelligence Policy and Review at the Department of Justice. The Department of Justice indicated on June 3, 1985, that additional information would be necessary to substantiate the continuance of this international terrorism investigation. FBI headquarters, after further review, on June 18, 1985—and this again occurred within the Counterterrorism Section—instructed the field offices to close their CISPES investigation.

Our investigation was managed by field supervisory personnel with review and oversight by both the Counterterrorism Section at headquarters and the Department of Justice. While we have conducted a limited examination of the headquarters CISPES file, a complete review and analysis are currently being performed by the Inspection Division, as Mr. Gavin indicated this morning, and this investigation on the part of the Inspection Division will determine if Attorney General guidelines, FBI policies and procedures as well as any applicable laws were followed during the investigation.

I might point out at this time that I know of no violations of law or guidelines, with one exception in the Varelli matter, at this time. That indeed may come during the course of this inquiry, but I personally and those at headquarters that have that responsibility with whom I spoke, have no such knowledge.

Some have insinuated that this investigation was politically motivated, as many individuals associated with CISPES were opposed to the Reagan administration policies in Central America. Mr. Chairman, nothing could be further from the truth. We have investigated a wide number of groups on each side of the political spectrum. Such right wing groups as the Aryan Nations, the Sheriffs Posse Comitatus and The Covenant, Sword and Arm of the Lord, and so forth. In the same region of the world as El Salvador we have conducted several Neutrality Act investigations of persons affiliated with Contra groups seeking to overthrow the Sandinistas in Nicaragua.

I have no knowledge, nor do any of my associates, of any—and I repeat any—political taskings or political contacts made by the

Reagan administration or anyone in the Reagan administration in regard to the FBI's conduct of the CISPES investigation.

The focus of FBI investigations has been and is criminality, or—as is very important in this case—the collection of intelligence which will keep our Nation and citizens free from terrorism. An examination of the CISPES case shows that FBI headquarters instructed its field offices on several occasions that care should be taken not to violate a citizen's constitutionally protected rights.

Those in the FBI responsible for authorizing the counterterrorism investigation believed information which had been brought to their attention, that CISPES was acting as the agent of a foreign terrorist organization, the FMLN, and certain of its members—identities unknown—were suspected of violating Federal laws. Again, let me digress. It was never the position of the FBI or its headquarters that the total membership of CISPES or all those associated with CISPES were in any way, knowingly or through any other means, engaged in terrorism. The investigation was to determine which of those within the organization, primarily in leadership positions, were in fact aiding and abetting the FMLN, a known terrorist organization.

Although our 2-year counterterrorism investigation failed to lead to indictments of CISPES members, we did find indications that some CISPES members were at least discussing and planning violence. Namely our investigation uncovered one CISPES member who was tasked to determine response times of emergency services in a major American city; another CISPES member stated he had developed a system to shut down a public utility in a major midwestern U.S. city; as well as plans to violently disrupt the 1984 Republican Convention. In addition, about the same time as a major CISPES rally was being held in Washington, D.C., a bombing took place at Fort McNair which was claimed by "those in Solidarity with the people of El Salvador."

Those responsible for authorizing and supervising the investigation at that time believed that CISPES was covertly furnishing funds and materials to the Salvadoran rebels and that U.S. laws might have indeed been broken. After conducting this inquiry for 2 years, no prosecutable criminal activity was uncovered. And at this point, the investigation was closed.

Our internal inquiry will determine if mistakes were made during the investigation. The predication for the investigation was based on what was known at the time. There was no conspiracy on the part of the FBI to inhibit freedom of speech or the right to dissent. In fact, I think you will find that there have been no indications to this point that there was ever any attempt on the part of the FBI to prevent anybody from speaking out or engaging in demonstration, dissent, or other types of associated activities.

The FBI has a very successful counterterrorism program. It is vigorous, aggressive, and effective, yet it is constructed to recognize the balance between the rights of individuals as well as the need of the nation for security. I can assure you that the FBI is committed to carrying out its responsibilities in a manner consistent with our legal obligations.

Mr. Chairman, one other point I would like to make. Since 1982, when I assumed responsibility for criminal investigations, and

since 1985 for all investigations, I have had an opportunity to travel throughout the world representing U.S. law enforcement in various fora, many times in connection with the discussion of terrorism. There has been on the part of our associates and colleagues overseas a great deal of admiration for the fact that we have been able to escape, to their mind, terrorism in the United States. And I have been asked on any number of occasions, why is it that the United States, with virtually open borders, with laws that prohibit actions on the part of your law enforcement that in most countries are taken for granted, why is it that with the ability to acquire weapons and munitions almost at will within the United States, that you have largely escaped terrorism?

I point out to them that if these incidents that I have recited, these 53 incidents had indeed occurred, then the United States would be seen as a center for terrorism. We would have suffered casualties and consequences that would have equaled those anywhere else in the world. But the fact that we have been able to put together a coalition of our intelligence services, our law enforcement agencies, and acted, under law, to prevent terrorism before the bomb went off, has been the secret of our success.

Mr. Chairman, that can only be done through the very careful collection of intelligence. That intelligence should not stand on its own, but should be directed towards the prevention of terrorist activity or the support of terrorist groups. And that indeed is our purpose.

I do not know at this point if errors were made in this case. But I can assure you that if they were, they will be corrected, because we believe that it is essential that the American people have confidence in our ability to carry out the counterterrorism activities of the U.S. government, but to do so under the law.

Thank you.

Chairman BOREN. Thank you very much, Mr. Revell. Certainly you will get no quarrel from any member of this committee on the last statement you made.

We understand the great importance of conducting appropriate investigations and actions to head off terrorism in this country. We also applaud the effectiveness with which the Bureau has operated to head off several potential devastating events that would have taken place had we not had an effective operation in place.

At the same time, we do want to assure ourselves that we're operating within the guidelines and that we're operating appropriately.

You mentioned in your statement that thus far you had found no evidence of any improper or illegal action. I believe you said that you had not seen any indication that the law had been broken within either the headquarters or the field office in the conduct of this investigation of CISPES except in one exception; the exceptional case relating to the Varelli matter. I wonder if you might spell out what that exception is.

Mr. REVELL. We conducted a criminal investigation of the loss of documents and that led us into a determination of other apparent misconduct on the part of the agent handling Mr. Varelli. We pursued that investigation to the point of having it presented to the

U.S. Attorney in Dallas and to the Department of Justice in Washington.

It's unfair since prosecution was not undertaken to characterize it as criminal activity, but it predicated a criminal investigation which led to a presentment on our behalf to the U.S. Attorney and the Department of Justice on potential criminal conduct.

Chairman BOREN. And this involved the handling of Mr. Varelli by the agent in charge?

Mr. REVELL. No, sir. Not the agent in charge. The case agent. His case agent.

Chairman BOREN. His case agent?

Mr. REVELL. Yes, sir.

Chairman BOREN. And it had to do at least partly with mishandling of documents? Is that what you indicated?

Mr. REVELL. Documents and funds and direction.

Chairman BOREN. And direction. On one Freedom of Information Act document that has been released is a message from the Dallas field office to headquarters, dated March 4, 1985, requesting that field supervision of the CISPES investigation be transferred from Dallas to the Washington field office. One reason given in that memorandum is that the former asset, and I quote that, "the former asset"—I guess that refers to Mr. Varelli——

Mr. REVELL. Right.

Chairman BOREN. "of the Dallas division primarily furnishing information re captioned organization is no longer in operation." I suppose that the reference is Mr. Varelli?

Mr. REVELL. Yes, sir.

Chairman BOREN. Was Mr. Varelli in fact a primary source of the FBI's information on CISPES?

Mr. REVELL. He was a substantial contributor. He was one of multiple sources. But he to my knowledge at this point did in fact provide substantial information that was used both in the predication and was given consideration in the continuance of the investigation.

Chairman BOREN. If the assessment in the beginning was that the information he presented was important in laying the predicate for the investigation, what was the FBI's current assessment of the credibility of Mr. Varelli in light of his charges that the FBI conducted break-ins and placed a picture of Representative Patricia Schroeder in a terrorist photograph album and other actions that Mr. Varelli has taken?

Mr. REVELL. Mr. Varelli has not disavowed all those statements. We still have not had an opportunity to interview him since he made the allegations. That portion—my associate Mr. Gavin has fled on me—is being conducted by the Inspection Division and has in fact been conducted by the Inspection Division Office of Professional Responsibility.

I believe Mr. Varelli provided a mixed bag of information. Some of his information has proven to be correct. Some of his information was blatantly false. Some of it was concocted out of his own mind and some of it was fabricated on the basis of contacts that he had initiated in El Salvador.

Unfortunately, that was not known at the time. It was known after the fact. And there's no question in my mind at this point,

although this will have to be addressed in the entire review, that that did result in the investigation being misled in certain material facts. Certain material aspects.

Chairman BOREN. So you have, certainly, strong questions about the credibility of Mr. Varelli in certain areas of information that he might have furnished.

Mr. REVELL. We do. There is a difficulty here. At the time the case was predicated, Mr. Varelli appeared to be a very credible person. The agents in the counterterrorism section that acted upon that information had reason to believe that it was factual and accurate. It's like a search warrant. You go forward with information from an informant, you believe that information to be true and you state why you believe it to be true, but on occasion it's not accurate.

I think that in Mr. Varelli's case, probably at the outset, most of the information was fairly accurate. When it went off on a tangent and started to incorporate more and more misinformation and inaccurate information, I can't tell you at this point. I hope that after the inquiry that we will be able to substantiate exactly or approximately when that occurred.

Chairman BOREN. Another FBI document on July 12, 1984, indicates that the FBI headquarters sent out to 33 field offices an analysis of the CISPES fundraising activities prepared by an official of the conservative Young America's Foundation. I wonder on what basis and by whom the decision was made to transmit this analysis by an official of a private group. I'm not passing judgment on whether this is a good group or a bad group. But simply, whether it had been a liberal group or a conservative group, a private group, is that normal FBI policy to have any group to the right or to the left preparing evaluations of other organizations and then to send them out to field offices?

Mr. REVELL. No sir. It's not. And I'd like to have Inspector Pomerantz who has looked into this matter answer that in more detail.

Chairman BOREN. Let me ask, Mr. Pomerantz, would you mind being sworn in and the other two witnesses if they would?

Do you swear that the testimony that you are about to give is the truth, the whole truth and nothing but the truth?

Mr. POMERANTZ. I do.

Mr. REVELL. I do.

Chairman BOREN. Thank you both.

Mr. Pomerantz?

Mr. POMERANTZ. Yes, Mr. Chairman.

Chairman BOREN. Is that normal policy? I was disturbed, and again it doesn't relate to the fact that it's a conservative group. I'd be just as concerned if it were a liberal group. This is a private group, as I understand it, the Young America's Foundation. Their analysis of CISPES and its fundraising activities was apparently sent out to field offices. Is that a normal—according to this document in 1984—is that a normal procedure to follow?

Mr. POMERANTZ. Mr. Chairman, I would not characterize that as a normal procedure or a procedure that occurs with any degree of regularity. However, in this instance, from my review of that document, we did have an investigation—a properly authorized investi-

gation of the CISPES group that was ongoing at the time. This individual attended—apparently attended—a meeting and in an unsolicited fashion not directed by us or with any previous contact by us furnished us some information about what occurred.

Now that was within the realm of proper information for us to receive. And I believe that's the basis for which it was—the basis on which it was sent to our field offices that were involved in that investigation.

Chairman BOREN. Did it go with any notation that this was an official of a private group which had a political perspective of its own? In other words, any sort of disclaimer? Just as I'm sure that you might send newsclippings from time to time to people, but was there a disclaimer here or was this just sent down without any kind of disclaimer or description?

Mr. POMERANTZ. Well, there is a description. There is no disclaimer as such. It characterizes the individual from whom the material was received, by name and by the organization that he represents. But there is no disclaimer further than that.

Chairman BOREN. Well, I think that's something we need to be careful about in that we don't want organizations on one part of the political spectrum, again, I say whether they are on the left or the right, furnishing information about organizations on another part of the political spectrum and then having them sent through FBI channels to district or field offices in a manner that might imply the approval of those views or the support for those views by the Federal Bureau of Investigation.

Mr. POMERANTZ. Mr. Chairman. I would just like to add there's been—I've seen an inference that this document, this particular document, was furnished because of the political views of the organization and the writer. And I commented to Mr. Revell yesterday that we on occasion send material that we receive on an unsolicited basis from organizations on the other end of the political spectrum to our field offices when that information is relevant to an ongoing case.

And the one that comes to mind most readily is from time to time we receive information from the Anti-Defamation League concerning the activities of some extreme right wing domestic terrorist organizations that are the subject of proper investigation. And we do send that again to our field offices for their information.

I think the initial decision as to whether that goes to a field office is: does it pertain to an ongoing FBI investigation. That's the threshhold decision. And if it does, then the other decisions would stem from that.

Chairman BOREN. Was that report from this foundation, this private Young America Foundation, classified?

Mr. POMERANTZ. No, sir. Not upon its receipt.

Chairman BOREN. Was it classified in the Bureau when it was transmitted?

Mr. POMERANTZ. Yes, sir, it was.

Senator METZENBAUM. Mr. Chairman, I'd just like to interrupt to say that the document is here, and it indicates that it was classified by SPVER sometime in 1984; and then that's crossed out. I gather it was subsequently declassified by SP-4-ELWIKFA on September 3, 1987. It was originally classified.

Mr. POMERANTZ. Yes, sir. I was responding to the question of whether it was classified when we received it. It was not classified when we received it because it was received from a private organization. It obviously cannot classify a document.

We classify that when we send it to our field offices, and the reason for that, Senator, is that on occasion documents would reveal the investigative interest that the FBI has in an ongoing investigation which in its totality is classified, and the individual document which would reveal the investigative interest in that case would therefore also be classified.

So it was not classified when we received it. But it was classified when we sent it out to our field offices for that reason.

Chairman BOREN. Let me ask just one more question, and then I'll turn to my colleagues.

Mr. Revell, you mentioned the possible links of Mr. Handal, the brother of the head of the El Salvadoran Communist Party, to this group. I think it was information furnished back in 1982 to the House Intelligence Committee. Also, there has been information or allegations that the documents, released under the Freedom of Information Act, reflect a suspicion of possible connection between the CISPES members and domestic criminal activities, including the bombing at the National War College in May of 1983 and threats against TACA airlines. Then I noticed that Director Sessions in his public statement on February 2, the same day that he appeared before our committee, said the full CISPES investigation opened on March 30, 1983, was predicated on information received from several sources that certain leaders and key members of CISPES were involved in covertly furnishing funds and materials to foreign organizations which would be a violation of the law.

At that time, did the FBI have any facts or circumstances that would reasonably indicate criminal activity by CISPES members?

Mr. REVELL. At the time of the Capitol bombing here, the Fort McNair bombing, and the Naval Shipyard bombing, there was in the Counterterrorism Section a strong belief based on the totality of information that individuals associated with CISPES might indeed be involved in those bombings. That was based upon a number of things which are pointed out in the white paper by and large although we can't give the specificity in the white paper as to dates and places.

The modus operandi, the claims, the positions, the timing, the receipt of communications, led those in the Terrorism Section to believe that within the umbrella—and this is a sort of S.O.P. for these type of groups—within the umbrella of CISPES were those who were action cells and those action cells were carrying out activities while the vast majority of the CISPES membership was in fact engaged in legitimate conduct.

That is not an unusual situation. That is in fact the way that most leftist terrorist groups throughout the world do in fact operate, with an umbrella apparatus that provides support and legitimacy to their political goals and aims.

So there was a strong belief within the section that within the CISPES umbrella there would be action cells operating as direct terrorist organizations including those responsible for the various

bombings. That did not prove to be the case. But that was the investigative premise under which they were operating.

Chairman BOREN. But was there then an adequate predicate, at that time, to have commenced the investigation under a criminal predicate, under the normal rules and guidelines, the unclassified investigation guidelines of the Attorney General?

Mr. REVELL. The difficulty in a criminal predicate is that much of the information involved came from overseas or from intelligence agency sources. It involved persons outside of the United States. In fact, it meets precisely the definitions set forth in the FISA statute as well as the AG guidelines for an international terrorist organization involvement of U.S. persons.

So in going back and reviewing to determine, and I know Senator Specter has been very concerned with this, trying to determine whether or not this investigation should have been predicated on a domestic security predication which would have required my approval, the Assistant Director at the time's approval, or a counterintelligence international terrorism predicate which required the approval of the section rather than the Assistant Director or the Director, I would still have to say that based on what information was available to the Bureau at the time, and our belief in its credibility, that that case was properly placed within the FCI guidelines.

Chairman BOREN. Rather than coming to the Assistant Director for approval?

Mr. REVELL. Well, the level of approval—under the domestic guidelines, the guidelines require the Assistant Director to personally approve an investigation of a domestic security case. The guidelines under FCI simply state FBI headquarters approval and that resided within the section. So there is a difference in the level.

However, the domestic cases do not require approval of the department. The international cases do. So there is a balance in that respect.

Chairman BOREN. Thank you very much.

Senator Cohen?

Senator COHEN. Thank you, Mr. Chairman.

And Mr. Revell, I'm pleased that you raised the issue about what might have happened and what the public reaction would have been had those bombs gone off, and the finger been pointed to the FBI at that time saying why didn't you do more.

Several years ago, I tried to raise some of these issues in fiction rather than fact.

Mr. REVELL. I read the book.

Senator COHEN. And that sometimes is more believable. But it was an issue that I tried to at least deal with in terms of how do we reconcile the conflicting needs of our society. Hopefully, we can preserve not only security but liberty as well.

They don't have many, if any, bombings on the other side of the Berlin wall. The challenge, however, is how to preserve that liberty. And it's easier to exercise the rule of thumb than the rule of reason.

We prefer the exercise of the rule of reason that requires you and others who serve the government to make judgments and to be sensitive to the conflicting needs within our society.

It is within that context that we're trying to conduct our hearings to make a determination as to whether that rule of reason has prevailed or whether or not we are getting a bit arbitrary in just putting the rule of thumb down on CISPES and perhaps some other groups.

I am interested in the statement you made that CISPES distributed a document which had been a disinformation document. And the question that ocurred in my mind is whether there was any evidence that CISPES knew the document was forged?

Mr. REVELL. I don't know that, Senator. That——

Senator COHEN. You see, that would be a relevant question to ask. For example, we know that one of our national security advisors sought to disseminate a disinformation statement through our own news media. Unbeknownst to them. The question would be whether they were being knowingly used. Knowledge becomes terribly important.

Similarly, back during the nuclear freeze movement, if evidence had surfaced, for example, that the Soviets were planting disinformation concerning the consequences of the NATO alliance going forward with the deployment of Pershings and ground-launched cruise missiles, would that have warranted those particular peace activists in this country coming under scrutiny because they were in fact disseminating information planted by the Soviet Union which after all does support, train, and arm terrorist groups around the world?

Mr. REVELL. Well that's a dilemma we face.

Senator COHEN. But isn't knowledge required before you can just say that CISPES may have been disseminating information—disinformation they should at least be required to know that they are doing this actively I would think?

Mr. REVELL. That's, of course, the objective of the investigation. To determine if in fact they are knowingly engaged——

Senator COHEN. But would that per se—would that in itself warrant an investigation? I guess that's my question.

Mr. REVELL. If CISPES is—or if individual members are knowingly acting on behalf of a foreign power, it would in fact authorize and in my view require an FCI counterintelligence investigation.

Senator COHEN. Let's suppose you just have information that members of CISPES are distributing information which you believe is disinformation formed by either FMLN or by the Soviet Union. Would that warrant an investigation at that point to determine whether they had active knowledge?

Mr. REVELL. We would conduct an inquiry of the means by which the document was being disseminated. If that inquiry determined that they were knowingly distributing it with an understanding that it was disinformation on behalf of the Soviet Union, yes. But of course you have to conduct a limited amount of inquiry to determine if there is a basis for an investigation.

Senator COHEN. The question I raised earlier is perhaps best directed to you, and that is the question I have concerning the definition of a terrorist group or organization. Is it a terrorist organization because it directs attacks upon Americans here at home and or in another country?

Mr. REVELL. Both. According to the provisions of the guidelines and the FISA statutes.

Senator COHEN. So if it directs attacks upon Americans here, such as a bombing in the Capitol that occurred several years ago that we are familiar with, or directs an attack upon a naval officer—Mr. Schaufelberger, he was assassinated—that would classify them as a terrorist organization. Correct?

Mr. REVELL. Correct.

Senator COHEN. What if they are simply engaged in a revolutionary war with an established government, such as the rebels in El Salvador trying to overthrow the existing government? Does that classify them as a terrorist group?

Mr. REVELL. You have passed extraterritorial jurisdiction on behalf of the U.S. government which makes it a federal offense to take as a hostage an American citizen and hold him with a demand against the American public—or the government.

Senator COHEN. I want to eliminate the American citizen from it for the time being. If there is just a revolution going on and guerrilla warfare taking place, let's say in El Salvador, does the group, the rebel group that is challenging the existing government, engaging in bombings, attacks upon civilian areas and so forth, does that classify them as terrorists?

Mr. REVELL. Yes, sir. I can use the example of the IRA, the Irish Republican Army which has not attacked any American targets or American persons. They are an international terrorist group.

Senator COHEN. Now what distinguishes the FMLN, aside from attacks on Americans for the moment, from the Contra cause in Nicaragua from your point of view, as far as whether it is terrorists or whether it is a domestic counter-revolutionary group?

Mr. REVELL. There's always a great debate in society as one man's freedom fighter is another's terrorist. And I think the difference in my mind is whether they—the groups, whatever they might be, engage in actions against the civilian population or noncombatants.

I'm not going to get into this Contra issue.

Senator COHEN. No, no. I think it is important that we raise the issue. For example on page 10 of your statement, you cite the fact that the Washington Post reported on February 18, 1988 that the FMLN rebels attacked a city in El Salvador killing 15 people including 4 children. I could I suppose cite the Washington Post or any other paper for showing a comparable attack by the Contras against civilian targets in Nicaragua killing women and children as well.

Now, I guess the point I raise is what is the difference as far as the FBI is concerned in categorizing one as terrorist and one as not terrorist.

Mr. REVELL. Well, the next article that I cited also went on to point out that they have publicly pronounced that they are going to eliminate, meaning kill, the American advisors which are there under the policy of the government including the funding provided by the Congress.

The difference is a very difficult one to precisely define, and in fact, as you know, we haven't undertaken investigations of individuals acting in their own behalf or on behalf of an organization to

fund the Contras in an illegal means or by illegal manner. In the closed session, you asked me about the contributors——

Senator COHEN. You're not supposed to tell everybody what I asked you in closed session.

Mr. REVELL. I know, but that wasn't a classified question. And my answer was not.

Senator COHEN. Go ahead, please.

Mr. REVELL. Whether or not we would have investigated or would investigate individuals contributing to lethal aid on behalf of the Contras. And my response to you was yes, we would.

Senator COHEN. The question: did you?

Mr. REVELL. The answer is no, because that information came after our jurisdiction was removed and placed in an independent counsel. And I presume that that counsel is in fact pursuing that investigation, as we would if we still had that jurisdiction.

Senator COHEN. So, in other words, testimony was taken from private U.S. citizens who were in fact solicited for contributions to raise money for lethal assistance to the Contras, and they would be at least allegedly in violation of the Neutrality Act, warranting an investigation and possible prosecution by the Justice Department and/or the FBI?

Mr. REVELL. We would have undertaken that investigation and the Department would have had to made the determination.

Senator COHEN. So the only reason that wasn't pursued is that the independent counsel is now considering that particular issue?

Mr. REVELL. That is an area that is preserved to his jurisdiction.

Senator COHEN. I indicated in my opening statement that we have a problem in a sense that under the Foreign Counterintelligence Guidelines these activities are classified. It seems to me that that's not going to be good enough to explain this to the public, and perhaps some sort of compromise can be struck whereby either it can be declassified, some of the material, or presented to the public in a way that is comprehensive.

To simply say it's classified and we can't discuss it is not going to resolve some of the doubts that are hanging over the entire investigation now. So I hope we can find a way as well as perhaps working with you and our staff to resolve that issue about the redactions so that we——

Mr. REVELL. Can I comment on the redactions, Senator?

Senator COHEN. Sure.

Mr. REVELL. As I indicated to the committee previously, my position is that the committee should have the total document absent the identity of the informants. Unfortunately, a lot of the information is covered by the third agency rule, and we still are in the process of getting the authority for that.

As far as I'm concerned, the committee should have access to the total documents with only the identity of the sources or anything such as Rule 6 E material—I don't believe there is any—that we're not entitled to give. But I think it would be very beneficial to the committee and certainly to the Bureau for the committee to have that information in its totality.

Senator COHEN. Well, I hope we can work that out soon.

Director Sessions made a comment about the scope of the CISPES investigation and I want to quote it for you. He said

during the CISPES investigation, CISPES members were in contact with large numbers of people who were affiliated with numerous organizations. Limited investigation was conducted to follow up information that was not complete. The focus remained on CISPES, not the other organizations, and was to round out or develop information on the scope of activities and influence of CISPES.

And I'd like to pursue this just for a moment. First, the Director indicated that the FBI's interest here was in determining whether, quote, "certain leaders and key members of CISPES were involved in covertly furnishing funds and materials to a foreign terrorist organization, the FMLN." But I take it that notwithstanding that particular focus, the FBI did develop information on all of the CISPES chapters within the U.S., is that right? Tell me if that is correct.

Mr. REVELL. I don't know. I don't believe that is the case. But I can't state definitively because the field has authority to——

Senator COHEN. Well perhaps you will do it for the record then. I'd like to know whether or not you in fact covered all CISPES organizations and all members within CISPES itself.

Mr. POMERANTZ. Senator? We can furnish that for the record. I think the problem is the defining of the term covered——

Senator COHEN. Surveyed, information gathered. My next question would be for example the information that was developed with respect to these individuals was to identify persons and organizations with whom they were in contact.

Now the question I have, would there be any limitations, for example, placed upon who fell into that category? Would it be relatives, business associates, boyfriends, girlfriends, foreign nationals, political groups, political activists? Were there any restrictions that may have been placed on those people coming into contact with the CISPES members?

Mr. REVELL. The focus of the investigation——

Senator COHEN. I know what the focus was. I want to know whether or not—it's sort of like an ink drop, you take a concentrated ink drop and put it on a paper towel and suddenly it spreads and the concentration is lost. Or if you drop oil onto water, you have almost concentric circles spreading out without restriction. And the question I have is whether there was a sort of concentric expansion without restrictions?

Mr. REVELL. We can't answer that yet. My position is I hope not. That was certainly not our intent. That was not the headquarters direction. It was not the focus of the investigation from the headquarters perspective. I have read all the headquarters tasking documents and that was certainly very carefully outlined.

That would be diminishing the effectiveness as well as going into areas that simply we had no business going into.

Senator COHEN. Well, I have just a couple of quick questions.

You mentioned during your first statement, Mr. Revell, that the FBI sent out some pretty straightforward messages cautioning the field offices to be very careful. But before I mention that, I assume that information that was obtained on various tens, hundreds, or perhaps thousands of individuals, once the investigation is closed, could be purged without——

Mr. REVELL. Well, there's a difficulty under the statutes that require us to maintain information. There is a legal provision that allows us to, or requires us to—maintain information but put it under certain limitations.

A great deal of the information in this file is nothing more than the documents of CISPES themselves including the names of most of the groups that you're talking about.

I don't know what can be done. But we will do whatever we can do in that regard.

Senator COHEN. I'd like to just read this directive that came out in July 1984 where the headquarters sent a directive to the field offices. And some of this information was deleted, but the relevant parts are as follows:

"The following is to reiterate the guidelines and instructions for these investigations. Based on the above, there is sufficient grounds for this investigation. It must be noted, however, that many of the people and groups involved with CISPES do so for political, emotional, or sociological reasons and are not aware of or involved in the CISPES covert activities enumerated above. Therefore, it is imperative that these investigations are closely supervised and monitored to ensure our investigations do not infringe upon the rights of these individuals or groups protected by the Constitution. Some officials have reported information recently regarding political statements and political lobbying by CISPES or CISPES affiliates. Supervisors and recent offices must carefully monitor this and related investigations and asset operations within your respective divisions to ensure appropriate direction, targeting reporting. Political activities or political lobbying by CISPES unless it can be shown as a violation of Foreign Agents Registration Act are not repeat not targets of this investigation and should not be monitored."

The question I have is why was it necessary to send out this strongly worded instruction more than a year after the investigation had started? What were these related investigations that were coming in? And why was this guidance consistent with the letter that went out concerning the Young America's Foundation that went out about 2 weeks earlier?

Mr. REVELL. The—let me comment on the Young America's letter. That went out over my name. I did not approve it or sign it.

I would not have. I don't want to disavow it being done because it was sent as a matter of information with no tasking. But I think it's inappropriate to even indicate that the views of another organization should be considered by our investigators.

Now I think we obviously had an obligation to accept the information because the individual was reporting firsthand information of his own activities. That information needed to be evaluated in the context of the overall investigation. And my view is that it should not have been sent out as a document of that particular organization. That's hindsight on my part, obviously.

The difficulty in this type of investigation is that the activities are interwoven with legitimate dissent, legitimate exercise of constitutional rights and to carefully weave the approach to not consider those activities except as they might mask legitimate targets of criminal and or intelligence investigation.

I think those directing this investigation sensed, and Mr. Pomerantz has talked with them and I think he can comment more than I can, sensed that this was very close to the line in regard to the conduct of an investigation. It had to be very carefully constructed not to get into an area that was both prohibited and counterproductive to the purposes of the investigation.

Indeed, from my view, we may have seen some wavering over that line. That was not the intent nor the guidance given and I think as headquarters saw some potential, they went back and reiterated those instructions.

Would you like to comment further in that regard?

Senator COHEN. Before you answer, could I ask, after you sent this directive out, and several others like it, did the information coming into headquarters comport or comply with that admonition? Did anyone review it, check it, send out follow-ups saying you're going over the line, or this is inconsistent with our prior admonition?

Mr. POMERANTZ. Senator, I realize or recognize as Mr. Gavin testified that this is part of his review. So I'd rather not conclude whether or not those alleged improprieties ever occurred or were continued.

I think there is another view of these instructions, however, and the reporting of the field offices. In reading that, the receipt or the recording or the investigation of political statements may not in and of itself be improper.

One of the things, one of the aspects of this investigation that you see throughout the instructions given to the field offices was potential violations of the Foreign Agents Registration Act. Political statements may in fact result in evidence that could be used in a Foreign Agents Registration Act investigation.

I think what you are seeing here is that very extraordinary concern on the part of headquarters. Someone—a question was, asked earlier is this investigation unusual. I'd be hesitant to answer that as well as I think the prior witness was. But certainly the heightened awareness on the part of FBI headquarters that there were potential problems in an investigation such as this is unusual. And it is reflected, in my opinion, throughout the file by the language that headquarters utilized.

Senator COHEN. It's not only the question of the language. I appreciate the language utilized. The question is, what was done in response to the language? Did the activities continue? If so, was there any attempt to curtail them, to reiterate the admonition? What was the follow-up after this kind of admonition? I understand what the language says. The question was, what was the conduct?

But I'll go on to something else since you want to withhold that until Mr. Gavin completes his investigation.

Mr. Revell, a question regarding one of the documents of the several that the committee has asked you for. It reads, "any other FBI headquarters documents that reflect any communications to or from any department, agency, interagency group including without limitation the Restricted Interagency Group the—so-called—RIG or any other entity of the United States Government or any private individuals concerning CISPES or support for the FMLN." Who

would that include in terms of the Restricted Interagency Group on which you sat?

Mr. REVELL. I didn't sit on the Restricted Interagency Group.

Senator COHEN. Did you partake in any of the RIG meetings?

Mr. REVELL. No, sir.

Senator COHEN. Who would that include?

Mr. REVELL. The Restricted Interagency Group? Well, I believe it included Elliot Abrams, Oliver North, perhaps John Poindexter. I'm not certain. The only thing I know about that group is what I heard during the Iran-Contra hearings. I was not a part nor was the FBI a part of that——

Senator COHEN. Did the FBI receive any communications from the RIG concerning the questions involving CISPES or FMLN?

Mr. REVELL. No, sir.

Senator COHEN. Senator Specter?

Senator SPECTER. Thank you, Mr. Chairman.

Mr. Revell, today I saw for the first time this document designated Interim Public Report on the Committee in Solidarity with the People of El Salvador, dated February 22. Is there going to be a subsequent or final public report furnished by the Criminal Investigative Division Counterterrorism Section?

Mr. REVELL. Senator, I believe that there will be a complete report, but it will be furnished by the FBI as an institution. What we've tried to do in this one is take those people responsible for the investigative process and the investigative oversight and put forward the information that we can put forward in a public forum as best we know it at this time.

But I think that it will be appropriate, and I would recommend to Director Sessions, that there be a public report completed after the internal inquiry and the reporting to the committee.

Senator SPECTER. Well, that's going to be Mr. Gavin's report, isn't it?

Mr. REVELL. That's correct.

Senator SPECTER. There is a question that I am concerned with, Mr. Revell. We had Judge Sessions' 3-page statement on February 2nd of this year, and that was given to the committee, the Intelligence Committee, at about the same time that Judge Sessions made a public statement essentially justifying the FBI action on CISPES. Now you have a rather elaborate document, some 11 pages single-spaced, very involved and very factual, which again essentially justifies the FBI investigation on CISPES. And at the same time, we're told that Mr. Gavin is going to conduct an independent investigation.

Why so many reports by the FBI? I hate to ask you two questions at once, but both are of the same thrust and in the interest of brevity. How is it realistic that Mr. Gavin is going to be able to conduct an independent report and come to grips and perhaps contradict the statements made in this interim report or in Judge Sessions's first report justifying the CISPES investigation? Doesn't it put Mr. Gavin sort of behind the 8-ball in having all these conclusions already set forth in an official FBI report?

I see lots of heads wagging no. Tell me why.

Mr. REVELL. I don't think so. Because that is in fact what it states, an interim report based upon information that we know

now. We didn't put that paper from the FBI for a reason. That paper comes from the element of the FBI responsible for terrorism investigations. This paper is based upon their review of the documentation available to them in headquarters, their position vis a vis the opening conduct and activities associated with the CISPES investigation.

As we—as the independent inquiry is conducted, and I have nothing to do with that, that's outside of my purview, they may indeed find facts and other information that might either give a different perspective or even contradict something that's in a report. I don't believe so. I believe that that is probably ninety-nine percent of the story.

The reason we presented it was that this committee asked for a white paper on our predication and conduct so that we could get out in front of this at the earliest date possible. Our position—our preferred position was to wait until we had a chance to answer all the questions and then do it at that time.

But because of the press of the media and those that were releasing documents on a piecemeal basis, and the concern of the committee to address these issues, we agreed to go forward with as much information as we could as early as we could, with the understanding—and when I get up here and take an oath, I take it very seriously—that we're going to tell what we know, and if we find it to be inaccurate, we'll correct the record. We'll come back and restate in the proper form any information we find that's inaccurate.

Senator SPECTER. Well, Mr. Revell, the concern I have is that it's a difficult job that Mr. Gavin has to start with, given the lack of total independence which we talked about earlier. And if you have these reports which constitute, as you say, ninety-nine percent of the story, it just makes it that much more difficult for Mr. Gavin to come back and to disagree head on.

But you've explained it and let's move on from there.

You testified that Director Webster was concerned about these kinds of investigations and wanted a sharp focus on criminal investigative matters. Was Director Webster involved in the CISPES investigation in any way, shape or form? Any supervisory part?

Mr. REVELL. I'm sorry. I didn't mean to cut you off.

No, sir. He was aware of several cables that came in reporting on various activities that were sent to him for information purposes, as they were sent to me for information purposes. He did not authorize nor did I authorize any of the activity. The supervision, under the guidelines and under Bureau policy at the time, occurred at the section level. If it had involved any extraordinary techniques, a Title III, a wiretap, an undercover operation, the placing of an informant in a leadership position or other things that would require my or the Director's approval, then of course that would have occurred. But it did not. It did not—there was no request for those type of authorities.

So the Director saw—Director Webster saw—4 or 5 cables reporting on various demonstration activities that were disseminated within the government, the Justice Department, and so—Secret Service and so forth.

Senator SPECTER. Did those cables which Director Webster saw touch on or summarize the CISPES investigation?

Mr. REVELL. No, sir. Just the information about that particular activity.

Senator SPECTER. What particular activity was that?

Mr. REVELL. The demonstration, the particular—primarily demonstration activities that were either at the White House, up here on Capitol Hill. By the way the Capitol Police received those disseminations as well. So I mean this was information that related to public safety issues rather than the conduct of the investigation.

Senator SPECTER. Why was it, Mr. Revell, that an investigation of this sort which was widespread throughout the country, which touched many organizations and many cities on a fundamental First Amendment right, which was on a matter of major national political importance and major national political debate, why didn't it come to the attention of someone higher in the FBI like the Director?

Mr. REVELL. The FBI in a given year conducts about between 170,000 and 200,000 investigations. There are policies established including the Attorney General Guidelines that require the Director's personal approval. I guess we can debate the level of approval but every case obviously and every activity obviously cannot be approved by the Director or by myself or by the Assistant Director.

Built into this process of the guidelines which were well known to the Congress was the level of approval required and the escalation of that approval as specific activities were undertaken. So, Senator, the approval was at headquarters within the section and by the Department of Justice OIPR.

If the activity undertaken on behalf of the Bureau had been a sensitive circumstance that required higher level of approval, it would have been obtained. So the only thing I can tell you is that the case never rose to the level that it required Director level of approval or review.

Senator SPECTER. You have testified that, if the guidelines had involved domestic terrorism activities, it would have come to your level substantially higher than the level of review. Given the experience of CISPES, would you say, as a matter of planning for the future, that such investigations ought to be reviewed at a higher level, perhaps as high as the Director of the FBI?

Mr. REVELL. We have taken interim steps to increase the level of review. The level of review at the present time is at the Deputy Assistant Director level with a periodic review of all such cases by the Assistant Director.

The problem we have is if we have an open review of every case, then the Director really reviews nothing because the volume of the work would be such that he will not be able to focus on the key and most sensitive issues.

I think it is a legitimate area of inquiry as to when a case of this type bleeds over into these areas as to the type of review it should have. I think if you look at the vast majority of cases that we have conducted under these guidelines, you have no concern that they were not reviewed and approved at the appropriate level.

Senator, all I can tell you is that those guidelines are established by the Department. If Director Sessions or if I or if this committee

see, that they are inadequate, then I'm sure that we can act to correct them. But of course we would still be subject to the Attorney General's guidance.

Senator SPECTER. Let me move for just a moment or two to the evidence which you gathered here. I compliment the FBI on the report which you have given here today about your activities, in stopping 53 planned terrorist activities, and I certainly agree with you that is very, very important. My own background as a District Attorney for some 8 years in Philadelphia gave me substantial insights in the kinds of problems you have. And I've done a lot of work with your organization.

And in reviewing the evidence which you summarized here, I want to deal with just a couple of points, not really very many; it may be that there's sufficient justification for your pursuing an inquiry with a certain threshold of information. And we do not know yet what that information is because we haven't seen it.

And this committee and I do not seek to superimpose our judgment for yours on discretionary calls. The Intelligence Committee has the responsibility for oversight to take a look at your general procedures. But as I go through your reports here, I have a sense that there is perhaps, and I say this tentatively, an inordinate defense of what you have done, step by step, in trying to justify investigative consequences. And let me be specific about it.

At page 13 of your testimony today, you talk about indications that some CISPES members were at least discussing and planning violence. I understand the use of your language. Not evidence for you, and I know the difference between evidence and indicators. As I read through them all, there is contrasted with your more extensive report a real straining to justify your investigation by what you found. I question whether that is accurate. Perhaps you don't have to justify your investigation by what you found. Your investigation is justified by the initial leads you had and the predicate that you started with when you conducted an investigation; and if you don't find anything, it doesn't necessarily mean that your investigation wasn't well founded.

But when you talk about indications, you refer here, quote, "About the same time as a major CISPES rally was being held in Washington, D.C., a bombing took place at Fort McNair near Washington which was claimed by 'those in Solidarity with the People of El Salvador'." In your detailed report, you go into some greater detail on this matter. You refer to an April 26, 1983 case in which an improvised explosive device detonated at Fort McNair. A communique was subsequently issued by the Armed Resistance Unit, ARU, a domestic left-wing terrorist group claiming responsibility for the bombing. If you read ahead, you can say that there were no direct linkages discovered between CISPES and the ARU. And then you say at page 5, this bombing occurred during the same time period that a CISPES demonstration was in progress in Washington, D.C.

When I read that, a parallel thought inevitably comes to my mind that on April 23 the Intelligence Committee was meeting. Also on April 23—April 26, 1983, Arlen Specter and Bill Cohen were in town. And it just doesn't have any prohibitive value to

make that kind of a statement and develop any link to CISPES. It just doesn't get there, in my opinion.

Mr. REVELL. Senator, I commented on that earlier. I believe that Chairman Boren asked me what was the basis of belief.

What we were trying to do in the statement is capture the belief within the supervisory structure at the time as to why it was necessary to continue to pursue this investigation. At the time that the bombings occurred here in the Capitol, the Navy Yard and at Fort McNair, there was a strong belief within the Counterterrorism Section that CISPES was serving as an umbrella group for those elements that were carrying out the bombings. And there was a reason for that. Part of it is classified. And we can go into that at some point in further detail.

Senator SPECTER. But, Mr. Revell, is it relevant that CISPES had a demonstration in Washington, D.C. on the same day?

Mr. REVELL. It was relevant only in the fact that the rhetoric was almost identical. I mean, to the point of almost the same sentence structure. There were indicators at that time that led them to believe that there was at least coordination.

And of course that's an investigative indicator as you know.

Senator SPECTER. No I don't know at all.

Mr. REVELL. Well, I can point to a number of such situations where we've had public communiques and public demonstrations where they have been coordinated.

Senator SPECTER. Well, you don't describe any such language. I would be interested to see it. On the face of what your report says, I would respectfully disagree with your characterization that it is a relevant comment.

You say in your same line as indications that a CISPES member was asked to determine response times of emergency services at a major American city. When you pick that up in the greater detail in your report, your language is that it was consistent with that kind of conduct.

And consistent conduct is not an indication of any impropriety. There has to be some activity in furtherance of a plan or a design.

Mr. REVELL. For a criminal charge. But also, as I pointed out, the creation of clandestine cells on behalf of the FMLN and the collection of intelligence for the purpose of potentially carrying out terrorist acts is a legitimate area of inquiry under the FBI Intelligence Collection Guidelines. So we have to remember in this regard we were not only looking for criminal predication, which is very specific as you know, but also intelligence information as to the activities which transcend pure criminal acts.

Senator SPECTER. But Mr. Revell, you say here on page 5 of the report that such activity may well be consistent with the activities of terrorists who are actively preparing to execute an act of violence. My time is up, and Senator Metzenbaum needs to leave.

Let me move away from this to one final point.

One of the key factors here involves the question as to whether the activities of CISPES were controlled by a foreign group. In your prepared testimony today, page 13, you note that CISPES was acting as the agent of a foreign terrorist organization. In the more detailed report which you filed, you stated that the investigation disclosed that CISPES was not. The specific language in the memo-

randum also noted that there was no specific evidence indicating CISPES was acting on behalf of or at the direction of a foreign power or group.

And I would ask you which is the fact?

Mr. REVELL. If you go back to the lead-in statement. Those in the FBI responsible for authorizing the investigation—in other words, at the time that they initiated the inquiry, they believed that CISPES was acting as an agent of a foreign power based upon the intelligence they had received at the time. And that, of course, was the purpose of the investigation to prove or disprove those allegations, that information that we had received.

So my statement is, that was the state of mind of the individuals authorizing the investigation at the time that they authorized it.

Senator SPECTER. Well, Mr. Revell, how could that be when the FBI submitted a report which went to the Assistant Attorney General, Lowell Jensen, and there was a conclusion that CISPES was not acting on behalf of a foreign power or group? I think this is important because throughout the text here, and I won't go into it now, you talk about the support of bombings and killings and then you talk about CISPES being involved with certain humanitarian activities. And if the 1982 investigation by the FBI had found that it was not subject to a foreign power, and the investigation had been discontinued by Assistant Attorney General Jensen at that time, what basis would there be later for a state of mind that they were subject to a foreign power?

Mr. REVELL. Those are somewhat overly broad. In the first place, the Foreign Agents Registration Act was primarily a record check to identify the group and see if there was any information in the public realm. It was not closed by the Assistant Attorney General. In fact, he came back and said if you develop any additional information, please reinstitute the case.

In March of 1983, there was a request from the San Antonio office to convene a conference because there were multiple reportings of independent sources on precisely the involvement of CISPES with the FMLN. This conference, which was convened, came away with a substantial collation of information indicating that there was a connection and it was a connection that needed to be investigated.

Based upon those findings, there was an opening communication sent from headquarters authorizing the investigation. And that was transmitted to the Department which concurred in it.

Senator SPECTER. Well, it's a very involved subject and we're going to have to pursue it further. I would just leave you with the thought that on the investigative trail, it may be that everything you did was justified based upon your predicates. But when you start to try to justify it in terms of an investigation leading to tangible indicators, as you described them here, I just have grave questions on whether they mean very much. We'll pursue it later.

Mr. REVELL. Senator, all I can try and do is explain what was in their minds.

As you know, there is a subjective basis to this analysis process in meeting certain standards. I can't say that in every instance they were correct in their analysis. But I do think that it fairly

characterizes the opinions they reached and the basis for their action.

Senator SPECTER. Well, I have grave problems with that. If you talk about a state of mind of a witness in a trial, that's one thing. When you are talking about trained investigators in the FBI, I think you have to be proceeding on the basis of tangible hard facts and evidence.

And a state of mind justification for what the FBI has done, I find problemsome. If you proceed in the realm—in a range of discretion based upon hard facts, i.e., tangible evidence, that's one thing. But I have a great question with the state-of-mind approach.

Mr. REVELL. Intelligence is not always evidence. Sometimes it is. But it does in fact exist and you have to act on it.

Those 53 incidents that we prevented started with intelligence. If we would have waited until there was tangible evidence, we would have been picking up the pieces of the bombs. We must act upon credible intelligence, and of course this committee deals with that all the time.

That is what I'm talking about that has to be analyzed, collated, and then acted upon based upon the experience and all of the factors set forth in the conduct of these counterintelligence counterterrorism investigations.

I can't justify for you this process because I think it has to speak for itself based upon what they knew, and how they knew it, and how they evaluated it. And that's what I've been trying to convey.

Senator SPECTER. Mr. Revell, in those cases, you had hard evidence. Thank you very much, Mr. Chairman.

Senator COHEN. Mr. Revell, earlier—before I yield to Senator Metzenbaum—I asked you about whether you served on an interagency group. And you indicated no. I meant the Counterterrorism Interagency Group. You do serve on that, don't you?

Mr. REVELL. I do.

Senator COHEN. And who are the other members on that?

Mr. REVELL. Well, I did not start serving on that until August of 1985. At that time, John Poindexter was on it. At that time, Ambassador—let's see, we had Armacost—I mean Armitage, Bob Oakley, and representatives of the CIA.

My involvement in that did not start until August of 1985, and never during the course of my continuing involvement with that coordination committee has CISPES or anything like it ever come up.

Senator COHEN. That's the kind of documentation we'll have to look at at a later time.

Senator Metzenbaum? Thank you for your patience.

Senator METZENBAUM. Mr. Revell, I heard you read your statement. I do confess that it gave me much concern—both the statement itself and the conclusions that are pretty much implicit in it. For you had two investigations of CISPES, and both of them were closed without any action being taken.

Yet you say, here in your statement, "CISPES was, according to testimony, involved in the distribution of the Soviet forgery to U.S. media." Whose testimony is that?

Mr. REVELL. That testimony was given before the Intelligence Committee. And I have the document which shows CISPES as the distributing——

Senator METZENBAUM. I can't hear you, sir.

Mr. REVELL. I'm sorry. That testimony was by Assistant Director O'Malley before the House Intelligence Committee. And it is set forth in a document.

Senator METZENBAUM. What was it based on?

Mr. REVELL. It was based on the documents themselves which show that they were distributed by CISPES. And we have copies of those if you'd like to see them.

Senator METZENBAUM. The documents themselves indicate that they were distributed by CISPES and this was the Soviet forgery?

Mr. REVELL. Dissent paper on El Salvador and Central America, Department of State, 11-6-80, to dissent channel from ESCATFD, reprinted by U.S. Committee in Solidarity with the People of El Salvador, Post Office Box 12056, Washington, D.C. 20005.

Senator METZENBAUM. If it appeared to be a legitimate document, would the average person, whether it was a CISPES official or anybody else, be able to make that distinction?

Mr. REVELL. Would they be able to determine that it was disinformation?

Senator METZENBAUM. Yes, that it was fraudulent, a forgery?

Mr. REVELL. Not on its face until it was pointed out.

Senator METZENBAUM. So on that basis, you don't have much of a case against CISPES, do you?

Mr. REVELL. No. That was——

Senator METZENBAUM. Then you go on to say, "CISPES publicly claimed to have been created to provide international support to the anti-government movement in El Salvador." And you go on to say, "according to the information available to the FBI, CISPES is believed to have been established with assistance of the Communist Party U.S.A., the U.S. Peace Council and the Salvadoran Communist Party. The believed involvement of the Communist Party U.S.A. in the formation of CISPES is significant inasmuch as CPUSA [Communist Party U.S.A.] has historically been one of the most loyal, pro-Soviet Communist parties in the world and has received substantial financial support in the Soviet Union. More importantly, the Communist Party U.S.A. continues to receive direction and guidance from the International Department, Central Committee of the Communist Party of the Soviet Union."

This looks very bad with respect to the Communist Party U.S.A. But what evidence is there that you have to cause you to make this statement: "CISPES is believed to have been established with the assistance of the Communist Party U.S.A.?"

Mr. REVELL. Senator, part of that information is still classified and has to be disclosed in closed session which we are willing to do. Part of it comes from a document that was seized in El Salvador, turned over to the U.S. Government, translated by the FBI, and is part of the public record.

Senator METZENBAUM. That's the report on the trip to the United States by——

Mr. REVELL. Handal. Farid Handal.

Senator METZENBAUM. Yes. Is that it?

Mr. REVELL. That's right. That's part of it.

Senator METZENBAUM. I just perused that, and I must say I can't find anything in it that confirms anything you are saying.

It says he had meetings and they were frustrating, and the meetings were with five, six people. They didn't know what they were doing. Some were Trotskyites, some were Communists. But he didn't say anything that I find in there about CISPES.

Now I didn't read it thoroughly and I didn't get through to the end of it, because it is a long document. Is there something in there that specifically says the Communist Party U.S.A. was involved in causing CISPES to come into being?

Mr. REVELL. There are—the description of circumstances and activities taken with other information that I cannot disclose in this hearing that led us to that belief.

Senator METZENBAUM. Well, let me just ask you: What is there? If you know something that makes you feel, or makes you certain, that this organization was caused to come into being by the Communist Party U.S.A., I think that's relevant information, and I can't understand what would be so senstive about it.

Second, we have the fact that two inquiries made by the FBI have arrived at the conclusion that the case should be closed. And yet I find, as I read your statement, a pretty good tying in of the Communist Party U.S.A. with CISPES. I don't know CISPES. I hardly even heard of CISPES until this case developed in Ohio.

So, what I'm trying to say to you is, what's the evidence? What are you basing it on?

Mr. REVELL. Senator, again, you are taking a February 19, 1988, look back. And what we are trying to do is recreate the facts and circumstances at the time in 1983 when the investigation was authorized.

There is still information that CISPES had the support and assistance of the CPUSA and the U.S. Peace Council in its formation. That information is both in the document that you cite as well as other information which is still classified and will probably remain classified but is available to the committee in closed session.

Senator METZENBAUM. Well, you say, on page 10 of your statement, that "the Registration Unit of the U.S. Department of Justice requested a check of FBI indices concerning the CISPES organization. The FBI responded . . . and furnished the Department with two items of information which had been reported to the FBI concerning CISPES and an individual . . . Farid Handal." That's this lengthy statement that he made, a report.

I have difficulty still in following——

Mr. REVELL. Well, then the department came back and asked us to conduct an inquiry. We checked with public source information. We did not conduct an investigation. Just an inquiry. We came back and reported to the department. They came back to us and said very well, but if you receive any additional information that they are acting on behalf of a foreign power, please reinstitute the investigation.

Senator METZENBAUM. Was that the inquiry that was requested by Lowell Jensen?

Mr. REVELL. That's correct.

Senator METZENBAUM. And then that was closed without any findings with respect to CISPES. Is that correct?

Mr. REVELL. That's correct.

Senator METZENBAUM. And then you go on to say that "on March 30, 1983, the Counterterrorism Section at FBI authorized an investigation of CISPES citing that CISPES and some of its members are or may be engaged in international terrorism." And then you go on to indicate that "FBI headquarters, after further review, on June 18, 1985, . . . instructed the field offices to close their CISPES investigation."

What was it that caused the Counterterrorism Section at FBI headquarters to request the inquiry on March 30, 1983?

Mr. REVELL. The Counterterrorism Section didn't request it. It authorized it.

The San Antonio Division, which had an informant reporting on terrorist activities in Central America as it impacted upon the United States, came into headquarters and requested a conference of those offices with similar information.

That conference was held and based on the information developed from the multi-office conference, headquarters analyzed that information at the Terrorism Section and then went forward with an authorizing communication which set forth the predication for the investigation.

That was then reduced to a letterhead memorandum that was sent to the Justice Department which came back and approved the continuation of a full counterintelligence terrorism investigation.

Senator METZENBAUM. Am I right in saying that the first investigation of CISPES began with the State Department giving a right wing journalist a document that was allegedly captured from Salvadorn guerrillas? That's this so-called document previously alluded to.

Mr. REVELL. Not to my knowledge. It came to us from the Justice Department with a request for a preliminary inquiry.

Senator METZENBAUM. That's when Lowell Jensen requested the investigation and that was then——

Mr. REVELL. By the way, that's in his name, but I think it probably came from the Foreign Agents Registration Unit under his name. But I doubt it if Mr. Jensen himself signed that.

Senator METZENBAUM. Director Sessions, in his press conference of February 2, 1988, said that in March of 1983 you had "information from several sources" to the effect that CISPES was giving funds and materials to the FMLN in El Salvador.

Staff tells me that the documents you have turned over to this committee ,show only one source. Are there other sources in the files that you have yet to give us?

Mr. POMERANTZ. Senator, there are other sources that have provided information. Yes, sir.

Senator METZENBAUM. How long will this committee have to wait before a document request of February 8th is fully met? Why don't we get them now, if you have them?

Mr. REVELL. Senator. The problem we have is the redaction process——

Senator METZENBAUM. Please use the microphone.

Mr. REVELL. I'm sorry. The problem we have is the redaction process has deleted a lot of the relevant information. That has to be corrected. And the people who do this are our legal counsel and records management divisions, and they act upon a particular standard. But we've told this committee that we want you to have all the information absent the specific identities of the informants. And that includes of course third agency information.

In attempting to complete this process, we're going to insure that you get all of the information, and then you can judge it on its merits.

Senator METZENBAUM. I don't understand, Mr. Revell. The gentleman is here.

Mr. REVELL. Mr. Gavin?

Senator METZENBAUM. Mr. Gavin. He said that all that redacting will be eliminated. It's been 2 weeks since the request was made of you for this information. I can't understand. It isn't that much information we're talking about.

Mr. REVELL. 3,000 pages.

Senator METZENBAUM. And have you cleared up any of it yet? Can we have some of it now?

Mr. REVELL. I think that the committee has all 3,000 pages. Some of it still has redaction because of the identity issue and also the third agency issue.

But it has all of the information other than those two exemptions, and we'll try and get around that third agency issue and information that was deleted because it would tend to identify an informant. I think that has been a problem that there has been a liberal deletion. Maybe I shouldn't use that term. There has been a——

Senator METZENBAUM. Liberal deletion of the conservative documents?

Mr. REVELL. I didn't want to get into the spectrum.

But in any case, we will do everything we can to see that you get all the information that would be necessary for your judgment.

Senator METZENBAUM. I have some additional questions, but our time is running out and I see that Senator Leahy has not had an opportunity to inquire. He sits with us as a Member of the Judiciary Committee, which has been invited to join with the Intelligence Committee.

Senator Leahy?

Mr. LEAHY. Thank you, Mr. Chairman.

And I am glad to see that the Judiciary Committee is part of this because we do have some essential areas under the jurisdiction of both committees. Mr. Revell, good to see you again.

I want to say at the outset that I recognize the threat of international terrorism. I've spent a great deal of time on that. I've also spent a great deal of time to move the FBI from an agency which not too long ago had shaken credibility to one with renewed public confidence. We want to make sure that that doesn't get eroded.

I've asked, Mr. Chairman, that my opening statement be made part of the record.

Senator METZENBAUM. Without objection. It will be placed in the record in an appropriate place.

[The prepared statement of Senator Leahy follows:]

PREPARED STATEMENT OF SENATOR PATRICK LEAHY ON FBI INVESTIGATION OF CISPES

Mr. Chairman, I am meeting with the Governor of Vermont this morning and will not be able to stay.

But I wanted to come here and commend you for calling this hearing. It is essential that the Intelligence and Judiciary Committees thoroughly scrutinize the events surrounding the FBI's investigation of a group of American citizens who disagree with the Administration's policy toward Central America.

Let me say at the outset that I recognize the threat of international terrorism. I have spent a great deal of time in the last seven or eight years pressing for a strong and effective U.S. policy against terrorism. I have fought to get the FBI the funds and other resources it needs to combat the terrorist menace.

I have also spent a great deal of time working with the FBI to move it from an agency whose credibility was shaken to one with renewed public confidence. I do not want to see that public confidence eroded. And I remind past and present FBI leaders that all the rules and regulations and guidelines in the world are useless unless the Bureau is determined to pursue its investigations according to those rules.

Investigations of private citizens exercising their First Amendment rights must be narrow and proportional to the crime under investigation and the evidence at hand. The committees with oversight responsibility must ask whether the Bureau had bona fide evidence warranting this type of investigation. We must find out what the Bureau did to ensure that the scope of the investigation was appropriate at the outset, and that it remained within appropriate and effective bounds all the way through.

I do not know where this investigation will lead. I do know that the Intelligence and Judiciary Committees must find the answers to the following questions:

Who initiated the investigation?

Why did this investigation require agents from over 50 FBI field offices?

Who was supervising it?

Why was the FBI focusing so much attention on this particular group?

Did the evidence necessitate a two-year investigation?

Did the FBI cast its net so broadly that it lost sight of the problem it initiated the investigation to address?

We have a responsibility to find out whether the resources allocated to this investigation were proportional to the evidence. We must find out whether those resources were put into action to stop terrorism or were misused or wasted on a chilling fishing expedition designed to stop Americans who happen to disagree with Administration policy from exercising the rights of free speech and association guaranteed to them under our Constitution.

If we find out that the investigation took on a life of its own, or that it was handled differently than FBI investigations into similar activity, we must find out why.

If we find out that the investigation was politically motivated, then we must act to eliminate Hoover-like abuses within the Bureau.

Today the controversy concerns the investigation of those with views that differ from a Republican administration. Next year a Democratic administration may be in office and a different issue may arise.

It is up to the Congress—and these two committees in particular—to ensure that America's democratic institutions and Constitutional safeguards remain a constant, dependable and impenetrable fortress in any political environment.

Our First Amendment rights are what sets this country and our system of government apart from the rest of the world. If there is any area in which we must doggedly pursue our oversight responsibilities, this is it.

Senator LEAHY. I don't think that any of us know where the investigation will lead, but on this CISPES matter, we should know who initiated the investigation, who was supervising it, why the FBI was focusing so much attention on this particular group, and whether the FBI cast its nets so broadly that it lost sight of the problem that initiated the investigation in the first place.

Mr. Revell, you spoke of briefings on this to the Judiciary Committee, specifically to the Security and Terrorism Subcommittee. Was that subcommittee ever briefed about the CISPES investigation?

Mr. REVELL. I don't know, Senator. I'm sorry I don't know Senator.

Senator LEAHY. I do not recall. I was Ranking Member of that subcommittee, and I do not recall CISPES ever coming before us.

Mr. REVELL. The information on the investigation of CISPES was provided to the Intelligence Committee but I don't recall——

Senator LEAHY. I do recall that.

Now, setting aside for the moment the question that we've gone into about whether you had sufficient evidence to investigate CISPES, I'd like to get into the collection of information on some 185 other organizations and individuals.

So explain again, please, how the Bureau could legitimately gather information on all these organizations for some 2 years. To what use was that information on 185 other organizations put in the Bureau?

Mr. REVELL. Senator, Inspector Pomerantz as Chief of the Counterterrorism Section has reviewed all those documents and is in a position to comment. I think that that misperception is part of the difficulty in explaining this process that we have to face. So if you would allow me, I'd like to have Mr. Pomerantz answer that question.

Senator LEAHY. Mr. Pomerantz?

Mr. POMERANTZ. Senator. As Mr. Revell stated earlier, the focus of this investigation was always on CISPES. And a great deal of the material in the file is material that is was produced by CISPES. And from that material which I have reviewed a great deal of it, there would be, for example, a leaflet or flyer concerning an activity that was going to be sponsored by CISPES, which was legitimate under the investigation, in my opinion, to be looked at. They would list the additional organizations that would participate in whatever that particular activity was.

And that's how the other organizations came to be mentioned in the files.

Senator LEAHY. But were there 185 other organizations mentioned in the files?

Mr. POMERANTZ. There were in excess of 185 additional organizations.

Senator LEAHY. Well, what's been done with all that information on these non-CISPES organizations? Are they now in the FBI files?

Mr. POMERANTZ. Well, they are in the FBI files. The vast majority of those were never even, and I'd hate to use a technical term, but never even indexed to our files and would be irretrievable except for the process in preparation for this testimony and physically going through page by page and listing the organizations that are mentioned. Because the vast majority of them were not even—it was not even deemed significant enough information on those other organizations to be indexed, and thereby retrievable by a search of FBI central records.

Senator LEAHY. Well, that gives me some consolation. Let's say that you have, just to make up an example, the ABC organization. Let's say it is mentioned in connection with CISPES. If it is indexed, how would it be indexed? As part of the CISPES investigation?

Mr. POMERANTZ. That's correct. If it——

Senator LEAHY. Is there guilt by association? That is what I'm driving at. I'm not trying to make any kind of trick question here. Are we running into a problem of guilt by association?

Mr. REVELL. That would be a reference in a file. It would not be a subject of a case. So there's a difference in a reference in a file.

When you write to us, Senator, your name is indexed into a file. We have a file on you——

Senator LEAHY. I know, I've seen it.

Mr. REVELL. Because you correspond with us. That does not mean you are a subject of our investigations.

Senator LEAHY. I remember some of the interesting aspects of that file from times when I disagreed with FBI policy and J. Edgar Hoover back when I was a District Attorney. But those are different days.

The reason I ask, Mr. Revell, is I believe you stated earlier that it was not part of the administration policy to investigate CISPES because of it disagreement with the foreign policy of the administration, specifically in Central America. Is that correct? Have I properly restated your testimony?

You understand the concern, though as revelations come out, and we find that part of the Reagan administration did get involved in political things. Certainly some high ranking members got involved in Congressman Barnes' campaign according to the testimony that's come out. High ranking members did get involved in my campaign because of my opposition to Central America policy.

And—I might say just editorially that the administration might have done more good by trying to define what its Central American policy was supposed to be than investigating people who may disagree with it.

But be that as it may, let's get back to CISPES. What led to the termination of it, of the investigation? I want to make sure I fully understand that. How did you suddenly decide to terminate the CISPES investigation?

Mr. REVELL. I did not—this was, again, it was initiated on the basis of a review by the Office of Intelligence Policy and Review of the Justice Department which came back and stated that based on the information furnished, it did not appear there was sufficient justification to continue, and asked the FBI for additional information.

During that process of review, and Mr. Pomerantz or Mr. Ricks can comment further on that, because they've gone back over that review, it was determined by those responsible in the section that there was insufficient information to justify the continuing investigation. Part of that, and I think a substantial part, was the realization that there has been disinformation, misinformation and inaccurate information provided by Mr. Varelli and it had to a degree misdirected the investigation at least in some of its parts.

Senator LEAHY. Was that the first real review of this investigation?

Mr. REVELL. No. It was reviewed by the Department of Justice in 1984. And of course when the Department conducts its review, then in order to prepare the Department by the submission of a docu-

ment, there has to be an internal review within the Terorrism Section itself.

And of course there was an ongoing review, and a number of communications that went out to the field as has been discussed earlier pointed out the process of this ongoing review to ensure that the investigation stayed within the parameters of appropriate inquiry.

Senator LEAHY. Well, let's follow that. At any time during those ongoing reviews, was there any indication that the scope of the CISPES investigation should be narrowed?

Mr. REVELL. I think a fair reading of the headquarters document would reflect a concern that there was at least misunderstanding on the part of some as to how to deal with this protected political activity and still attempt to ferret out any information that would be within the proper acquisition of the investigation.

So I think that is a very—there is a very fine line there and I think there was some grappling with that.

Senator LEAHY. There's some what? I'm sorry.

Mr. REVELL. Grappling. Some attempt to come to grips with how to best understand the extent to which the activities that were political in nature could even be considered within the scope of the investigation and how to limit that.

Senator LEAHY. The Office of Intelligence Policy review of this investigation—had that been done say 6 months earlier than it was, do you think that they would have found at that time sufficient reason to close down this investigation? Close down the CISPES investigation?

Mr. REVELL. I don't know, Senator.

Senator LEAHY. Mr. Pomerantz?

Mr. POMERANTZ. I would have no idea, sir.

Senator LEAHY. The Chairman has given me a note which says that two Senators, Senator Leahy and Senator Byrd, have called a meeting of the Judiciary Committee at 12:45.

Mr. REVELL. You're late, Senator.

Senator METZENBAUM. No. Senator Leahy has one at 12:45 on the caucus of the Dems in Judiciary. And Senator Byrd has the Democratic Conference.

Senator LEAHY. I see. I wouldn't move for this guy Leahy. But for Byrd, that gets to me.

So let me close with this one. Mr. Chairman, I'd ask unanimous consent that I be allowed to submit questions for the record.

Senator METZENBAUM. Without objection. I'm certain that the FBI will cooperate.

Mr. REVELL. Yes, sir.

Senator LEAHY. And they always have. And I hope you understand, Mr. Revell, the real concern we have up here. I have the utmost respect for members of the Congress that have been on both sides on the Contra issue: those who have agreed with the position I have taken, those who have disagreed.

It's been done openly, in debate on the floor of the Senate and the House. The administration has stated its position. Those in opposition have stated theirs. And we've voted up or down. No question. That's the way democracy works. We have the right to vote for a mistake, or policy if we want. Or to vote for what we think is

the right policy if we want. But I don't think either you or I would want to see a circumstance where the FBI with its enormous investigative power gets into that political debate.

Mr. REVELL. No, sir. And I can assure you that in this situation, it was absolutely no contact by anyone in the administration in regard to the direction, tasking, or opening, closing or anything else other than the contacts with the Justice Department from Mr. Jensen and OIPR that have been cited.

And that I would view with great alarm. In fact, I would probably proceed over to the Office of Professional Responsibility and file an ethics in government violation with anybody who would even try.

Senator LEAHY. Well, I will follow up some more afterward about the degree to which the investigative net was spread out. And while I take some comfort in your statements about the indexing, I want to follow up on that.

I haven't had a chance to look at the classified material on this. After I do, I'll probably even have further questions.

Thank you, very much.

Thank you, Mr. Chairman.

Senator METZENBAUM. Thank you, Senator Leahy. This committee stands adjourned subject to call of the Chair.

[Thereupon, at 12:50 p.m., the committee was adjourned, subject to the call of the Chair.]

SENATE SELECT COMMITTEE ON INTELLIGENCE INQUIRY INTO THE FBI INVESTIGATION OF THE COMMITTEE IN SOLIDARITY WITH THE PEOPLE OF EL SALVADOR [CISPES]

WEDNESDAY, APRIL 13, 1988

U.S. SENATE,
SELECT COMMITTEE ON INTELLIGENCE,
Washington, DC.

The Select Committee met, pursuant to notice, at 10:18 a.m., in room SH-219, Hart Senate Office Building, Hon. David L. Boren (chairman of the committee) presiding.

Present: Senators Boren, Bradley, Metzenbaum, Cohen, Murkowski, Specter, Hecht, Warner, and Thurmond.

Also present: Sven Holmes, staff director and general counsel; James Dykstra, minority staff director; Kathleen McGhee, chief clerk; and John Elliff, Gary Sojka, Edward Levine, Fred Ward, John Despres, Regina Genton, James Currie, Marvin Ott, Blythe Thomas, Natalie Bocock, Robert Morgan, Keith Hall, Charles Battaglia, Merrill Kelly, Britt Snider, Jeanne McNaughton, George Tenet, Paul Joyal, and Chris Straub, staff members.

Also attending: Duke Short and Mark Gitenstein, Judiciary Committee.

Chairman BOREN. Strom, why don't you come up here and join me. I am very happy to have Senator Thurmond with us here this morning. We have invited members of the Judiciary Committee who might like to be with us to also attend today's meeting. Other members of the committee are expected to join us shortly.

Today the committee resumes its hearings on the FBI investigation of the Committee in Solidarity with the People of El Salvador, known as CISPES. Our witnesses are the Justice Department's counsel for intelligence policy, Mary Lawton, with whom we have had the privilege of working previously, and the deputy counsel, Allan Kornblum. We are happy to have both of you with us.

Since this is a part of our ongoing investigation in this matter, we will take today's testimony under oath also. I would ask if the two of you would stand to be sworn at this time.

Please raise your right hand.

Do you swear to tell the truth, the whole truth, and nothing but the truth?

Ms. LAWTON. I do.

Mr. KORNBLUM. I do.

Chairman BOREN. Thank you very much. Before we begin our questions, I want to put into the record a letter which the committee received yesterday from FBI Director Sessions. In that letter he says that his internal investigation is taking longer than anticipated and that he does not expect it to be completed before the end of May.

The FBI has given the committee extensive classified documentation from the Headquarters and Dallas field office files on the CISPES investigation. However, there are still some redactions that raise concerns, and we are trying to work out procedures for the committee to get all the information we need. The committee has requested a good many more documents from other files, including the administrative files on Frank Varelli, which the FBI has not yet provided. Let me just underline that it is our intent to proceed to obtain the documentation necessary for this committee to make an independent evaluation. We will do that in private and public forum. This is not something that is going to go away. Just to express my own point of view, this chairman is getting more than a little impatient with the progress we are making in getting the documents that we have asked for. These requests are going to be made at a higher level of volume if they are not more forthcoming at the Bureau.

We have also informed the FBI Director of our intent to interview the FBI officials who were the key decision makers in this case. However, we cannot schedule those interviews until the staff has had an opportunity to review as many of the relevant documents as possible. And again, I want to underline that. We are conducting ourselves in a fair and impartial manner but with growing impatience, however.

In short, it looks as if we will have to spend more time on this investigation than we originally anticipated or that we should have to spend, if we had better cooperation. Staff should keep all the members informed, through the designees, on the progress of our work. Specifically, I have asked the staff to report next week on the results of their discussions with the FBI on arrangements for meeting the committee's need for information. If we don't get that, we will just simply go public about the lack of cooperation and take a different track in this investigation, as far as I am concerned. If issues cannot be resolved at that level, then we will have to schedule a hearing with Director Sessions immediately.

Let me ask the other members present, Senator Hecht or Senator Thurmond, are there any comments you would like to make before we hear from our witnesses?

Senator THURMOND. I don't have any comments; thank you, Mr. Chairman.

Chairman BOREN. Thank you very much.

Ms. Lawton, we would be very happy to hear any opening statement you would like to make or, if you would like, we can just turn to questions.

TESTIMONY OF MARY LAWTON, COUNSEL FOR INTELLIGENCE POLICY, DEPARTMENT OF JUSTICE, ACCOMPANIED BY ALLAN KORNBLUM, DEPUTY COUNSEL FOR INTELLIGENCE OPERATIONS, DEPARTMENT OF JUSTICE

Ms. LAWTON. No, Mr. Chairman, we don't have an opening statement.

Chairman BOREN. Well, let me ask—perhaps before discussing the case—if both of you could tell us about your past experience in the Justice Department. We know that you both were involved in writing the first FBI guidelines under Attorney General Levi in 1976. I wonder if you could tell us about your backgrounds in the Department and your work in the Office of Intelligence Policy and Review, particularly as it related to the policy questions that we are discussing here.

Ms. LAWTON. Well, I came to the Department, Mr. Chairman, in 1960 under the Attorney General's Honors Program in the Office of Legal Counsel. I served as attorney-adviser in that office until February 1972, when I became Deputy Assistant Attorney General. As, you mentioned, in 1975, I was appointed to chair the Attorney General's guidelines committee and remained in that position as part of my duties as Deputy Assistant Attorney General until 1979, when I left the Department. From 1979 to 1980 I was general counsel secretary of the Corporation for Public Broadcasting. From the summer of 1980 until January 1982, I was administrative law officer at the White House and then returned to the Department as counsel for intelligence policy.

Our work in that office involves—on the operations side, in particular—the review of proposals for electronic surveillance under the Foreign Intelligence Surveillance Act and the presentation of those to the court; the supervision of the aspect of any litigation arising out of the Foreign Intelligence Surveillance Act; [deleted] by the FBI; the processing of requests for Attorney General authorization for exceptions to various Federal Government housekeeping statutes that are needed in order to conduct undercover investigations. In addition, we review the guidelines and procedures, not only of the FBI, but of all the intelligence agencies, which are required by Executive Order 12333; negotiate or mediate memoranda of understanding and agreements between intelligence agencies on intelligence operations; and respond to a variety of requests for legal opinions on subjects too numerous to mention but frequently involving things like application of constitutional principles to new technologies, as to which there is no case law. I can let Allan fill in on anything he wants to add.

Mr. KORNBLUM. Mr. Chairman, I began with the Department in 1965 as an FBI Special Agent, serving from January 1965 until the end of 1969. I left the Bureau at the end of 1969 and went to Princeton University, where I completed my Ph.D. and served as director of security at the same time. I returned to the Department in 1975 and worked with Mary Lawton for 2 years, drafting the domestic security and foreign counterintelligence guidelines. In 1977, I was appointed Chief of the Investigation Review Unit, which began handling foreign counterintelligence matters prior to the enactment of the Foreign Intelligence Surveillance Act. In 1979,

when the act was passed and adopted, I was given responsibility for implementing that act, and a new office, the Office of Intelligence Policy and Review, was created. I am the operational deputy, and I have five attorneys working full time on operational matters, mostly the Foreign Intelligence Surveillance Act, but we also review several hundred of these foreign counterintelligence investigations conducted by the FBI. We also process requests for undercover operations and other activities related to the FBI's foreign counterintelligence work.

Chairman BOREN. Thank you very much. You both certainly bring much experience and background to our inquiry and to our discussions today. We appreciate your being with us, and we look forward to the perspective which you can provide as we undertake to understand what happened in this case.

Let me summarize. It is my understanding that you have had the opportunity, both of you, before this hearing to look at the four FBI letterhead memoranda concerning the predicate, the basis for the CISPES investigation. The FBI says that it provided your office during the period 1983 to 1985 with these memoranda, and you have had a chance to refresh your recollections. Is that right? Have you both had an opportunity to see those?

Ms. LAWTON. Well, if I could explain a little more, Mr. Chairman. I had never previously seen these until last Friday. The review of these investigations is handled by Allan and his staff, and I seldom am involved. But one of those documents we can find no record of ever previously being furnished to our office, although the FBI's distributions list shows that it may have been.

Chairman BOREN. Which one do you not have a record of having ever been furnished to the office? Which date was that?

Ms. LAWTON. The date is June 29, 1984, and it was apparently a supplemental to the [deleted] on the investigation.

Chairman BOREN. I see. Let me go back. When was the first memorandum submitted according to your records?

Ms. LAWTON. It is dated June 1983—well, yes, the memorandum is dated June 22, 1983. We would have seen it some 1 or 2 months after.

Chairman BOREN. That was the original statement of the predicate on which this——

Ms. LAWTON. The original [deleted] yes.

Chairman BOREN. Yes. And then the second report was the one that is the [deleted]. Is that correct?

Ms. LAWTON. That was April 1984, yes.

Chairman BOREN. OK. Then this one that you mentioned was apparently a supplemental to it?

Ms. LAWTON. Apparently it is, Mr. Chairman. We can find no record in our office that we received it. However, the FBI's cover sheet shows that a copy was marked for us.

Chairman BOREN. Right. But you have both had a chance now to review those that the distribution chart shows were distributed to the office.

Now, I understand that in opening any investigation under the Attorney General's guidelines for foreign counterintelligence investigations, [deleted].

Ms. LAWTON. That is correct.

Chairman BOREN. And then again [deleted] as long as it is continuing.

Ms. LAWTON. That is correct.

Chairman BOREN. And also, if your office determines that a predicate is unsatisfactory under the guidelines, the investigation generally will not go forward. Is that correct?

Ms. LAWTON. Well, we have to be careful about that, Mr. Chairman. We don't determine. We express a view as to whether or not it meets the standards of the guidelines and raise questions with the Bureau. If they have answers to those questions—and each of these is dependent upon the skill of the author obviously—they may come back with the information orally or in writing. That may satisfy us. If we raise a question, and they don't come back to us, they make the decision whether to close or not. But they tend to follow our advice.

Chairman BOREN. Right. Can you think of any cases in which they haven't since you have been there?

Ms. LAWTON. We don't automatically get a report back, so we wouldn't know for certain.

Mr. KORNBLUM. I can't think of any instances in which they have not closed a case we found serious question with.

Chairman BOREN. Let me go into the predicate for the CISPES investigation from two points of view. The first is your own knowledge or best recollection of what the role of the OIPR actually was in reviewing, approving, and then closing the FBI's investigation of CISPES between 1983 and 1985. So we could go back and indicate at each stage what the reaction of your office was, including the final stage in which the investigation was then closed.

The second is your current evaluation of the information about the predicate in these four documents and its significance in terms of the requirements of the FBI guidelines. Of course, we are also interested in the much broader questions about the FBI's conduct of the investigation. But we realize that your office had limited information about the case beyond the predicate documents. In other words, your role is to look at it from the point of view of the predicate documents.

So, you could start by telling us how your office handles FBI investigations under the foreign counterintelligence guidelines and then describe how your office reacted in the CISPES case, as these documents were provided to you.

Ms. LAWTON. Well, I will ask Allan to elaborate, but I will give sort of a general outline. The [deleted] that we receive when a case is opened are just that—reporting requirements. We note that we have in fact seen them, and that the reporting requirement has been met. We generally do not comment on a [deleted]. If something struck us as egregiously off base, we might raise a comment. But typically we use a form, a one-page form, Mr. Chairman, that we send back to the FBI on these. And with respect to the [deleted], the form simply notes that we have seen it, what its date was, and what the originating field office was.

On the [deleted], the form has two blocks to be checked. One is: "We have reviewed the report of this date from this field office, and it appears to meet the standards of the guidelines." Or "we have reviewed the report of this date from this office which does

not appear to meet the standards, and the following additional information is required."

In this case, we cannot find our notation form on the original [deleted]. In those days, we were going to the FBI reviewing the documents there on their turf, and basically carrying along carbon paper to slip between the two forms to make copies. It may be that somebody forgot to make a carbon copy on this one, I don't know. But we cannot find the copy.

Sometime in the middle of 1984, the practice changed. The Bureau literally ran out of space to accommodate us. And so they started sending the reports over to us in our offices. And there we reviewed them and sent them back. But the initial reaction to the [deleted] was almost certainly just to note that we had seen it. From what we can reconstruct, the initial reaction to the [deleted] report was, "appears to meet the standard of the guidelines." As to the [deleted], we have a copy of our form, and the reaction there is, "does not appear to meet the standard of the guidelines."

Chairman BOREN. Let me stop here. The [deleted] came back, the very first [deleted] on which you say you usually do not make a substantive decision, you simply note the receipt of the [deleted]. Is that correct?

Ms. LAWTON. That is correct.

Chairman BOREN. You can't actually find that in the files, but you assume in terms of the distribution chart that you did actually receive the [deleted]—you have no reason to believe that you did not receive it.

Ms. LAWTON. We have no reason to believe we did not.

Chairman BOREN. Now, on the [deleted] then, which would have been about March of 1984?

Ms. LAWTON. It is dated March of 1984; we would have seen it sometime after that.

Chairman BOREN. All right. In terms of your reaction to that [deleted], you did not raise any objection to the continuation of the investigation at that point, is that correct?

Ms. LAWTON. That is correct.

Chairman BOREN. So the investigation was ongoing. Then you received another [deleted] in March 1985, roughly, is that——

Ms. LAWTON. Well, it is dated March; we received it in June, I think.

Chairman BOREN. Yes. And that is the time at which you began to indicate insufficient predicate in your judgment for continuing?

Ms. LAWTON. We checked off the box, and I will give you the literal reading: "I have reviewed the [deleted] investigation dated March 4, 1984 from the Dallas field office pertaining to the"—[deleted] but the caption is CISPES—"the information provided does not appear to meet the standards of the Attorney General's guidelines. Please provide additional information regarding the following." And then there are handwritten notes from our attorney, who reviewed it, "information that activities are connected to international terrorism," that is, please provide such information. "It appears this organization is involved in political activities involving First amendment activities and not international terrorism." And that is what was sent back to the Bureau.

Chairman BOREN. Is that——

Senator BRADLEY. What is the date on that?

Chairman BOREN. Would you give the date of that document?

Ms. LAWTON. Well, the Bureau's LHM that we were reviewing was March 4, 1985.

Chairman BOREN. Yes. What is the date of this response?

Ms. LAWTON. The date of our response is June 3, 1985.

Chairman BOREN. June 3, 1985, you say it is dated. When did you receive it in your office? When was it stamped "received?"

Ms. LAWTON. Within a week of that particular time.

Chairman BOREN. Which particular time?

Ms. LAWTON. The June date. It is generally a 2-month lag, a month to 2 months.

Chairman BOREN. Before it gets to you? Why is it that long?

Ms. LAWTON. It is reviewed at Headquarters when it comes in from the field.

Chairman BOREN. Oh, I see. Headquarters prepares this predicate—I'm sorry, I mean the field office prepares it and Headquarters reviews it, and sends it on to you. So the date was really the date that the field office provided it to the Headquarters.

Ms. LAWTON. The date you have on the LHM is the field office date.

Chairman BOREN. I see, all right.

Ms. LAWTON. And then, they tend to send them in batches. So that the lag time between the field office date and ours is one to two months.

Chairman BOREN. Now I understand what you have said is confirming the statement that Director Sessions made in his original public statement on this case on February 2, 1988. He said that your office evaluated the investigation during, June of 1985, advised the FBI that on the basis of information made available to the Department of Justice, it appeared that CISPES was involved in political activities involving First amendment rights and not international terrorism. Would that be an accurate statement then?

Ms. LAWTON. Yes. That is correct.

Chairman BOREN. I think I have gone into the next question I intended to ask, and that is the delay that really wasn't a delay in your office from March 4th to June 3rd in responding to the mamorandum. It was the fact that you did not receive it until much later. The delay was more likely at FBI Headquarters, before it was transmitted to you and after they received it from the field office. Is that correct?

Ms. LAWTON. That is correct.

Chairman BOREN. How long was it from the time you received it in your own office until this reply was made?

Ms. LAWTON. Well, I will defer to Allan on that.

Chairman BOREN. Mr. Kornblum?

Mr. KORNBLUM. We normally turn them around within ten working days.

Chairman BOREN. Ten working days. Was that the case here? Do you have——

Mr. KORNBLUM. I have no reason to think otherwise.

Chairman BOREN. You don't have a date-received stamped on it?

Mr. KORNBLUM. No. The Bureau is now providing us with an inventory of the [deleted] cases they sent over, and now we keep that inventory so we can tell exactly when a case came in before.

Chairman BOREN. You say [deleted] cases sent over under this particular act?

Mr. KORNBLUM. Under the guidelines.

Chairman BOREN. Under the guidelines.

Mr. KORNBLUM. We review investigations of Americans, U.S. persons.

Ms. LAWTON. Yes, under the guidelines. Now when you say [deleted] cases, over what time frame is that?

Mr. KORNBLUM. Well, let me just give you figures here. We just went back and made a quick compilation. In 1985 we reviewed [deleted] cases. In 1986, we reviewed [deleted]. In 1987, [deleted]. And thus far this year, this calendar year, we have viewed [deleted], as Mary explained, we used to go over to FBI Headquarters where we would find the material waiting for us. Now that the material comes over from FBI Headquarters, they send over an inventory so we are able to keep better track of these cases. The premise underlying the guidelines was that our office would not maintain a duplicate file system of the FBI's counterintelligence investigations. We did keep duplicates of all of our reviews in which we in effect turned down the report as being insufficient.

I would like to add just a few comments of background so that you appreciate the review process, perhaps, a little better.

First, the attorneys who review these cases also prepare 500 or 600 FISA applications eacn year, and they also review hundreds of requests for undercover activities under the exemption statute in which the Attorney General and the Director of the FBI exempt counterintelligence activities from certain statutory prohibitions, and the attorneys themselves come from a wide background. One was a former defense counsel in the New York bar. One woman is a former head of legal aid in Northern Virginia. A former U.S. attorney. And two criminal division attorneys. So they bring a lot of experience to these cases.

The FBI agents who are supervising these FCI cases are the same ones who come to us for the FISA applications and the undercover activities. And so we have a very good rapport—it is not as if we are dealing with an anonymous bureaucracy across the street. As I indicated, we have always done this in batches. Even though we used to go to FBI Headquarters, there would always be [deleted] applications. We now receive them in batches of [deleted]. I look through them and disseminate them in equal numbers to the attorneys, apportion them. And the attorneys review them. If there are questions, or if they see activities which are questionable, they will raise them with me. We may have a conference, because usually there are several derivative cases coming out of a particular counterintelligence case.

In the context of CISPES, we must have reviewed a substantial number of derivative cases, and by 1985 we were very concerned about all of them. And we wrote back to the Bureau expressing the same concerns, that the initial indications of terrorist activity in the initial [deleted] and the [deleted] had not borne fruit, and the investigations had not substantiated them. I should also point out

that, as Mary has indicated, in our initial [deleted] review of the cases, there is usually just an outline of a case. This [deleted] had far more detail than most of the [deleted] we get from the FBI.

Very often we get cases simply reporting an act of espionage by general description, what's called a profile. As the cases begin to focus in on specific individuals who are known, or reasonably believed to be, Americans or U.S. persons, under the guidelines, our inquiry becomes much more specific. In this case, even in the [deleted] there was a fair amount of activity, and I am sure, although I cannot recall specifically anything about the case until problems—actually, I couldn't recall that until 1985 when we began and I sat down with Mary and reviewed these cases, that there was a problem with the case. The initial reports seem to meet the guidelines without great difficulty.

I am sorry if I have taken too long.

Chairman BOREN. No, no. We want to get a full accounting from you. But let me ask, is it true, Mr. Kornblum, that you sent a memo to Ms. Lawton discussing several FBI investigations of individuals connected with CISPES? And that she gave you guidance on those cases that also applied to the CISPES group investigation?

Mr. KORNBLUM. Yes. Just a little hand note that I sent along with several of the cases as an example.

Chairman BOREN. When was that?

Mr. KORNBLUM. That would have been in 85.

Chairman BOREN. In 1985. Was that after the second report?

Mr. KORNBLUM. At the time that the second report and the others related to it were in our office——

Chairman BOREN. So you were looking at it that time, and you sent a memo asking Ms. Lawton for guidance in this matter?

Mr. KORNBLUM. Yes. Now what happened was that the attorneys came to me—several of the attorneys that were reviewing all these cases—and said we have a problem here, and I agreed, and then I wrote the memo to Mary and gave her a bunch of cases to review.

Chairman BOREN. Could you give me a summary of the main thrust of your memo? In other words, what were the things that were really concerning you, what were the other attorneys saying to you in terms of their concerns, and what kind of concerns did you express to Ms. Lawton?

Mr. KORNBLUM. Well, the concern was that there was no terrorism being shown in the reports. Usually our standard question for the Bureau is, where are the facts supporting [deleted], and we usually write back, where are the facts supporting terrorism? Where are the facts supporting intelligence activities? In this case, all that we were getting were first amendment activities being reported.

Chairman BOREN. So, in other words, what was being reported was just going to meetings where people were expressing their viewpoints?

Mr. KORNBLUM. Yes. Of course, it is normal for the Bureau coverage to consist primarily of informant reports. That would be in terrorism cases in particular, where there is a small terrorist group. [Deleted.] So that is not unusual.

Chairman BOREN. So, in other words, it is not unusual for them to be attending meetings where nothing particularly untoward takes place as long as evidence does turn up along the way that

there is actual terrorism or improper intelligence activities going on along with this.

Mr. KORNBLUM. That is right.

Chairman BOREN. And in this case there was nothing beyond a normal, constitutionally protected, political activity.

Mr. KORNBLUM. Well, by 1985, there was a real paucity of any terrorist information in the Bureau's reports.

Chairman BOREN. All right. To summarize, your office told the FBI in June—oh, let me stop right there for a minute before we go on. What was Ms. Lawton's response to your request for guidance?

Ms. LAWTON. I believe the cases that Allan sent me were seven or eight individual cases. None was the organizational case, CISPES itself. But there were seven related cases. I believe the response, and I don't have the verbatim, but it was something like "the bulk of this is garbage." [General laughter.]

"I would throw out," or something to that effect, and I named the five or six that I thought should be closed and then I said this one and this one would probably make it, that is, make the standard. But I think the word was "garbage"; I hope it wasn't any cruder than that. [General laughter.]

Chairman BOREN. Maybe we shouldn't probe into the files to determine exactly what word was used. [General laughter.]

Now, you said one or two might make the guidelines. One or two involved with CISPES?

Ms. LAWTON. Well, there were two individuals involved with the Latin American left support. I can't be any more specific than that.

Chairman BOREN. So these were individual persons?

Ms. LAWTON. They were individuals. All of them were individual cases; none was an organizational case that I saw.

Chairman BOREN. None was an organizational case on CISPES. You just saw several individuals that are being looked at tangentially to CISPES?

Ms. LAWTON. John Dokes, El Salvador. Jane Roe, Nicaragua. That sort of thing.

Chairman BOREN. Right. Now, I assume that the first [deleted] on the entire CISPES organizational investigation was also submitted. Is that correct?

Mr. KORNBLUM. Yes.

Chairman BOREN. But you didn't look at that one.

Ms. LAWTON. I didn't look at that at the time, no, Mr. Chairman.

Chairman BOREN. But, Mr. Kornblum, you did, of course?

Mr. KORNBLUM. Yes, in 1985, yes, that is right.

Chairman BOREN. When your reply was quoted earlier about political activities involving First Amendment rights and not international terrorism, that applied to the organizational investigation, did it not?

Mr. KORNBLUM. That is correct. To CISPES.

Chairman BOREN. And I assume that many other individual investigations were terminated at the same time?

Mr. KORNBLUM. Well, we made the same reply or comparable comments——

Chairman BOREN. On the individuals.

Mr. KORNBLUM. On the other cases.

Chairman BOREN. On a number of individuals.

Let me go back now. To summarize, your office told the FBI in June of 1985 that the CISPES investigation no longer appeared to meet the guidelines, that CISPES appeared to be engaged in political activities involving First Amendment rights and not international terrorism, and that additional information was needed to justify continuing the investigation. Now, what was different about the case a year earlier when your office allowed the investigation to continue? What had changed between 1984 and 1985?

Ms. LAWTON. Well, then again, now I am looking backward, strictly, I'm——

Chairman BOREN. We realize this. We are asking you in a sense to be an armchair quarterback, looking back on this.

Ms. LAWTON. In terrorism cases, in particular, because of the nature of the threat, if at the outset there are allegations and there are activities that may be at the time ambiguous, either First Amendment or terrorist related, and there are some indications of [deleted], we tend to give the benefit of the doubt to the Bureau and to those allegations. If time does not fear them out—and one of the differences between the 1984 and 1985 reports was the calendar year that had transpired—in the 1984 report we had a bombing, a specific bombing in the United States that may have been connected to CISPES. We didn't know, but that is the point of investigation, to find out. Nothing further. No bombings between 1984 and 1985. No report of [deleted]; original allegations were simply not panning out.

And so part of it is the passage of time. And part of it is what we found in the LHM. Now, that is not to say that the LHM accurately reflected Bureau files. As I said before, it depends on the skill of the drafter. You will note in looking at them, for example, that the 1984 report, first 7½ pages, duplicate the [deleted] and repeat all of that information. It is not repeated in the 1985 report. Now, that may be because the Bureau assumes that in looking at [deleted] of these a year, we remember, which would be a poor assumption. Or it may be that the Bureau itself had decided that those original allegations had not panned out. We can't tell, but in 1985 those original allegations aren't there anymore, and there is nothing new that looks like terrorism to us.

Chairman BOREN. So, in a sense, the standards do become more stringent with the passage of time because if there is a basis for allegation, as you say, [deleted] and so on, that may be a basis for opening an inquiry. But as it goes along, you are looking more and more to see if the actual inquiry has turned up evidence to support those original allegations.

Ms. LAWTON. That is right, Mr. Chairman. We do this not only in these cases, but we do that with the Foreign Intelligence Surveillance Act as well. It may meet the probable cause standards of 51/49 percent at the outset, but if, after 2 years pass, nothing has gone on to substantiate the allegations, we will take a hard second look and may very well close it down.

Chairman BOREN. Now, the second letterhead memorandum of 1984 reflected a change in the scope of the investigation. On pages 10 and 11 of the one that you don't have a record in your own files of having received, the objectives are stated as follows. [Deleted.] Two, determine extent and nature of CISPES involvement in orga-

nizing and supporting terrorist activities within the United States with particular attention placed on the forthcoming political conventions and the 1984 Olympic Games. Could questions by your office have influenced the FBI to narrow the focus of the investigation? I wonder if Mr. Kornblum ever suggested that the FBI close the broader CISPES group investigation and limit itself to investigating three key individuals in CISPES, since there appears to have been a change?

Mr. KORNBLUM. In looking back in our files, I did find one other case where I suggested specifically going from an organizational one to one focused on the three or four key leaders, since that was where the probable cause seemed to lie or the facts seemed to lie. I have no recollection—I did not do it in this case. Actually, I think the objectives are not—they are a lot better than some of the objectives we have seen drawn in other cases.

Chairman BOREN. Well now, so you do remember perhaps suggesting——

[General laughter.]

I am not sure that reassures the committee. Let me ask that again. I am not sure I understood. Did you suggest to the FBI that they narrow the scope?

Mr. KORNBLUM. In another CISPES related case. Not in the CISPES case per se.

Chairman BOREN. Oh, in a case involving individuals?

Mr. KORNBLUM. No, it was another organization.

Senator THURMOND. Oh, another organization. Related to CISPES?

Mr. KORNBLUM. Yes, it was a part of—you know, a spinoff from this.

Chairman BOREN. A spinoff? And so, in commenting on it, you commented that perhaps they should constrain their CISPES investigation as well?

Mr. KORNBLUM. No, no, I didn't. In that case, in that other spinoff case, I suggested perhaps that you might consider changing this from an organizational investigation to one focused on the three or four key people to whom the probable cause seems to relate. I did not make—or have no record of doing that in the CISPES case.

Chairman BOREN. Do you remember when that was you made that suggestion?

Mr. KORNBLUM. It was in 1985 also, 1984 or 1985.

Chairman BOREN. You don't know if it was 1984 or 1985?

Mr. KORNBLUM. No, I don't.

Chairman BOREN. Can you recall what kind of review your office made? I understand the first letterhead memorandum would have been on June 23, 1983, that is the first [deleted] when you say you generally just acknowledged receipt of it. Can you recall at all the consideration you gave to it? Or what the most significant information was at that time that justified the initiation of the investigation of the guidelines?

Mr. KORNBLUM. Well, as Mary explained in the first [deleted] review, we simply acknowledge that we have reviewed it. If we have trouble with it, if we think there is insufficient information, we will say so immediately and alert the case agent that the predicate, even for [deleted] seems very weak. But in this case, I have no

recollection. Considering the hundreds of cases that we see, this was a relatively small case.

Chairman BOREN. Well, looking back now, let me ask you, Ms. Lawton, is that the same with you? Of course, you said you didn't see this yourself, it did not come to your personal attention until later.

Ms. LAWTON. But, looking back on that [deleted] to, I would not have been troubled by it. I know just from this current perspective. Apart from it causing me to be up here.

Chairman BOREN. Now the first [deleted]—the date of it was June 23, 1983, as I understand it. Well now, looking back at it in hindsight, what was the most significant information that was provided in terms of meeting the guidelines? I am not asking about your reaction to it at the time, but as you look back on it now?

Ms. LAWTON. Well, taken in groups, as I went back and made some notes on it, Mr. Chairman, first of all, there are allegations from a source in a position to know of [deleted]. And apart from the informants' own testimony, you have a Los Angeles demonstration in which the organization, CISPES, proclaimed its aim to be the support of the FMLN. So you have the foreign tie, which is one of the definitions.

Chairman BOREN. You have this public proclamation as a group that has supported the FMLN, and you had this source stating——

Ms. LAWTON. And we had the source.

Chairman BOREN. And the source—[deleted].

Ms. LAWTON. Well, in addition, yes, we had the source saying [deleted]. Again, violations of law. We have the source saying [deleted].

Chairman BOREN. Is that because somebody called the local radio station to claim credit saying we are in solidarity with the people of El Salvador?

Ms. LAWTON. Using that same sort of formula, yes. And at a time when CISPES was meeting in the city of Washington. We have a source saying [deleted]. On the strength of that, I don't have any problems with it meeting the guideline standards at that time.

Chairman BOREN. What facts in the memorandum justified opening the investigation under the foreign counterintelligence guidelines for international terrorism rather than domestic terrorism or criminal investigative guidelines?

Ms. LAWTON. Well, that is why I started off with the international aspects, Mr. Chairman. It is just that: the definition of international terrorism talks about the activities transcending international boundaries. And we have allegations [deleted]. All of those would fit in the international definition rather than the domestic.

Chairman BOREN. So the [deleted], those would be elements.

What is the policy justification for the foreign counterintelligence investigations rather than criminal investigation? Is there some reason why we should do it? Is it because a prime objective is enforcement of the Foreign Agents Registration Act? Or immigration statutes? Or what leads us to hang our hat on that, when we are all so concerned about domestic terrorism in which they might be involved?

Ms. LAWTON. First of all, the Congress told us rather clearly in the Foreign Intelligence Surveillance Act that they wanted us to do

this. So we have the Foreign Intelligence Surveillance Act itself using the definition which is the identical definition we use in the guidelines. But, in addition to that, we have some court cases, Mr. Chairman, the Falvey case and the Megahey case coming to mind, where the courts themselves have looked at it, in the context of the Foreign Intelligence Surveillance Act, looked at the obligation of the United States under international treaties to fight terrorism, whether or not it is directly aimed at the U.S. In both those cases we had defendants saying, well, yes, but our terrorism isn't aimed at you, it is aimed at somebody else, so why do you care? And the court said it is the constitutional obligation of the United States to care under treaties such as the protection of hostages, protection of foreign officials. So we had that obligation coming out of the court cases and, as I said, coming out of the FISA statute itself.

Chairman BOREN. Let me ask, under the Foreign Intelligence Surveillance Act, does it allow the FBI to use electronic surveillance if the FBI has probable cause to believe that [deleted] in the United States for members of such group?

Ms. LAWTON. Well, it again will depend on the specific facts, Mr. Chairman. But the support of international terrorism, yes, that is definitely a basis for using the Foreign Intelligence Surveillance Act. And it doesn't have to be lethal support; the legislative history makes it clear that it doesn't have to be lethal support. But the test we tend to apply——

Chairman BOREN. It just has to be knowing support?

Ms. LAWTON. This is the test that we tend to apply, that it has to be knowing support for terrorism, and we generally—and I couldn't tell you if it is legal interpretation or prudential guidelines—as a practical matter we apply a de minimis rule in terms of the type of support. Mere cheering on the sidelines isn't enough. It has to be concrete support. It has to be substantial support. But it does not have to be lethal support. Hiding, providing safe houses, is one of the examples used in the legislative history of the Foreign Intelligence Surveillance Act, and I would submit that safe house and sanctuary are not all that different.

Chairman BOREN. Right. Well now, the FISA standard bars electronic surveillance of U.S. citizens or domestic groups based solely on the exercise of First Amendment rights as I understand. Do you apply these standards also in reviewing the foreign counterintelligence investigations? In other words, if it is solely exercise of First Amendment rights, I gather from what you said back in this case, you would recommend not going forward.

Ms. LAWTON. We do, Mr. Chairman—and this is a history that comes from a slightly different angle, but I think is relevant. We had cautions in the original domestic security guidelines about relying on First Amendment activity to open a domestic security case. And the Bureau took that, in our judgment, too literally. They started assuming that they could never pay attention to what people said about their intentions. One of the reasons for redoing the domestic intelligence guidelines was to put in language to make it absolutely clear to the Bureau that they could listen to what people said about their intentions. That it would be admissible evidence in court. Just that they couldn't take rhetoric alone and build a case on it.

We tend to apply—and I might say, the Bureau uses guidance we give them in one case as a precedent for deciding how to handle another one—so that the sort of guidance Allan talked about could be carried over—and the guidance we give them in the domestic cases, I think, was carried over as well to the international. They are worked out of the same section. That is, you may listen to what people say, but you may not base a case solely on that. And we underline the solely part.

Chairman BOREN. Right. I am going to call a short recess. I have a few questions when I come back, but we have a vote on. So we will take a very short recess, and I will be right back.

[A brief recess was taken.]

Chairman BOREN. We will resume, and I have two or three questions. There are some other members coming in who may have a few questions.

You looked at several or, as you said, into hundreds of FBI investigations of international and domestic terrorism. Can you give us any examples of cases where the FBI started an international investigation of this kind with information as sketchy as we had in this case and later discovered some serious terrorist activity or plan?

Ms. LAWTON. Well, I can think of one right off hand, Mr. Chairman. It was in the same time period, where all we had was an allegation coming from a single source, [deleted]. But it was a reliable source, and we not only opened an investigation [deleted] which is rare, but because of the threat and because of the history of ASALA in general, we thought it warranted. [Deleted] it took them a month to try and bomb the Air Canada terminal at the L.A. International Airport. But they did try, and we came behind them, with the LAPD in a bomb pickup truck. We picked up the bomb; the LAPD dismantled it. We went and arrested the three—a fourth escaped to France where extradition was declined—but we convicted the three. We also got information from that same FISA that enabled the Canadians to identify four assassins in Canada who, while they did not kill, made a paraplegic out of the Turkish commercial attaché in Ottawa. And we made the information available to them, and they got their convictions there as well.

In the same time frame—a spin-off of that case was five more, this time Justice Commandos for Armenian Genocide, who transported a bomb from L.A. International Airport through Boston that was directed for the Turkish consulate in Philadelphia. We intercepted the bomb; we have convicted them. The Ninth Circuit quite recently affirmed that conviction and the use of the FISA there. There was a lot of activity going on.

In the same time period, you called our attention, Mr. Chairman, to the [deleted] Olympics. We had a number of concerns out there. [Deleted.] There the tactic was different. We sent out agents together with immigration officers to call on the Iranian student leadership, and, as I recall, the interview program consisted of two things. One, the FBI agent saying "we know what you are up to and we are watching you." And the second was the immigration agent saying "and you are taking 12 credits a semester, aren't you?" They were so busy registering, we had no trouble with them,

we had no trouble with them during the Olympics. [General laughter.]

So that right in this identical time frame, yes, we had a number of successes. The two cases I mentioned earlier, Megahey and Falvey, were gun-running cases to the PIRA. Again we both prevented the shipments—in one case prevented the guns from leaving this country; in the other case, allowed the guns, properly tracked, to leave the country, found the shipment route being used (which was from here to the Netherlands to Liverpool and then to Dublin and then by truck to Limerick)—and had simultaneous arrests conducted both in Limerick and here in the United States of the gun runners. All of this in exactly the same time frame as we are talking about.

Chairman BOREN. Right. Well now, when your office works on cases like the CISPES case, do you have only what the FBI chooses to put in its memos to you? Only that information, or is that information combined with other information from any independent sources?

Ms. LAWTON. Well, we have no independent sources of our own. [Deleted.] That is a necessity. And so that we will get the [deleted] and may very well have independent knowledge based on what we had put in the FISA application on that same case.

But in cases where there is no electronic surveillance involved, what we get is what is in the LHM or what we might in conversation pick up from the agents. There is a constant stream, Mr. Chairman, of agents in and out of our vault, on a daily basis and as Allan said before, very good rapport. If we know who the supervisor is at Headquarters, we could pick up the phone and say what is going on here, try to get some additional information.

Chairman BOREN. Well now, in this case, the FBI has since learned that its principal source in the case, Mr. Varelli, turned out to be highly unreliable. That became clear as we went along. Did you have any way of knowing that when you reviewed this investigation? Would you ever question the FBI as to whether they had carefully checked out a source? Because really, as I was listening, we were looking back on that first [deleted] and then again the [deleted] at which time you didn't seem to raise any red flags or see them. The kind of information, the allegations that were spelled out, obviously were highly dependent upon this source.

Mr. KORNBLUM. The reliability of a source is a very, very common area of inquiry in FISA applications and would be one in a case like this. I honestly don't recall or wouldn't know whether or not it was specifically taken up. But again we rely on the integrity of the case agents that we deal with if there is a problem, either initially, if the source's reliability is unknown at the time the investigation is initiated, or if it develops subsequently. And I do know in FISA cases, for example, they have come to us and said look, you should understand, it is common in counterintelligence cases to keep checking your source on a polygraph or otherwise, and there are other instances where the Bureau has come back and said: "Source that we previously thought was reliable we now believe is unreliable, or we are just not certain of his reliability."

Chairman BOREN. But you are pretty well guided by the determination of the Bureau itself on the reliability of the source, aren't you?

Mr. KORNBLUM. That is right.

Chairman BOREN. Would you ask, for example, that the source be polygraphed, or might you call the Bureau and ask them for additional information about a source's background or anything like that?

Mr. KORNBLUM. Well, we would ask—we would certainly want to know the basis for the source's knowledge. Is it first hand, is it hearsay, how does he know it, and does he have any personal involvement in this case? And whether or not they have checked on his reliability, and, of course, whether or not information he has provided in other cases or in this same case been verified. We always stress in the FISA applications that the source has provided information in this case or other cases which has been corroborated.

Ms. LAWTON. But we have been more likely, Mr. Chairman, to do that in FISA cases than in these cases. Because in FISA cases we are making representations to the court and very often will include in the pleading a source and then the magic phrase, "who has provided reliable information in the past." Or "a source who is in a position to know." We have to make that in the pleading. We have to swear to it. We will inquire into it in that context less so in this context. In this context, though, the memorandum does explain that the source is in a position to know. It does not go into the reliability issue.

Chairman BOREN. Yes. Now with [deleted] cases like this every year coming to you, what level of attention are you able to give to these matters? What amount of time, for example, would have been spent on the review of this particular case?

Mr. KORNBLUM. Well, fortunately, the operational work comes in regular cycles. For example, yesterday the Foreign Intelligence Surveillance Court met and last—about every 2 weeks. In fact, Judge Doherty of Oklahoma City just finished up on the court 3 weeks ago. When court meets or when it is concluded as it was yesterday, we have a lull of 2 weeks between then and the next sitting of the court, and that's when we do cases like this. Each attorney would get about 10 cases to review. Some of the cases would be open and shut. [Deleted.] I think also that I have indicated the background of the attorneys there. They are not what you would call necessarily—they don't have a law and order background. Many have been defense counsel, legal aid people; I think they would bring that to their inquiry as well.

Chairman BOREN. How many attorneys work on these sort of matters within your——

Mr. KORNBLUM. Five, in addition to myself.

Chairman BOREN. Five, in addition to yourself. Now let me ask this question. First, do you have any recollection at all of how much time was actually spent on the CISPES review?

Mr. KORNBLUM. Well, collectively, probably a few hours. That is, I do recall talking with several of the attorneys about the concerns and preparing the note to Mary. So if you add all the time spent, there were a substantial number of related cases, perhaps 30 or 40.

Chairman BOREN. Individuals plus the organization?

Mr. KORNBLUM. Yes. Several hours, you know, several days if you total it all together.

Chairman BOREN. Are we talking 25 attorney hours or are we talking 100 or can we——

Mr. KORNBLUM. Probably 10 or 12 attorney hours.

Chairman BOREN. 10 or 12 attorney hours.

Let me just ask this last question, and then I will turn to other members of the committee. How well adapted do you think the foreign counterintelligence guidelines are to international terrorism cases? Should there be new guidelines specifically adapted to international terrorism situations as opposed to the normal foreign counterintelligence guidelines and, if so, have you given any thought to just what standards and procedures we should incorporate into them?

Ms. LAWTON. Some years ago, Mr. Chairman, we took a look at the possibility of separating the international terrorism guidelines from the counterintelligence guidelines because those guidelines were written originally and remain pretty much today [deleted]. That is what we had by way of background from the Bureau to work with when we first wrote them. [Deleted.]

[General laughter.]

Ms. LAWTON. [Deleted.] Then we have international terrorism which is often a——

Chairman BOREN. What do you mean about that comment about [deleted].

Ms. LAWTON. [Deleted.] International terrorism is different again and different from within itself. These guidelines work perfectly fine for [deleted]. They don't work so well when you are talking about a large organization, because that wasn't the model we had when we wrote them.

But when we look to the possibility of separating them out, it was so duplicative because some of the definitions are going to remain the same and some of the rules, certainly the FISA rules, will be the same, and it seemed perhaps a waste to try to separate them out. But it is a problem. It is a problem in the location of the international terrorism investigations in the Bureau. And they have had it both places. They have had it in the intelligence division, and they have had it in the criminal division, and neither is entirely satisfactory, but it is something we just have to deal with and build on. As I said, we have a body of precedent. Whenever we get into one of these things, we create a precedent. And the bureau has a better institutional memory probably than we do, in terms of relying on those precedents.

Chairman BOREN. Now, I apologize to my colleagues for not telling the truth—I am going to ask one concluding question. [General laughter.]

Having seen this situation, is it an aberration? Do you think that, generally the Bureau procedures are fairly good, or do you see some sort of systematic problem? As we look back on this, it took two years for the determination finally to be made that this was inappropriate. In other words, you felt there was a strong predicate based on what the source was saying and so on, [deleted] these other things that were talked about that were allegations of in-

volvement of the organization, which two years later we find out absolutely did not pan out. So is there anything we could have done in this case or could do in the future to prevent this kind of thing? You know, we have had two-thirds of the district offices of the FBI involved, literally thousands of man hours involved in this—not only the disturbing question of violation of First Amendment rights, but also the question of misallocation of scarce resources. We have a lot of legitimate counterintelligence concerns in this committee, and here we have thousands of man hours spent all across the country on something that turns out to be snooping on people exercising their First Amendment rights. Is there anything we could have done to have spotted this mistake earlier and stopped it?

Ms. LAWTON. I am not sure that there is, Mr. Chairman. Well, it depends I suppose, on where you start off on that. We have and had at the time, particularly around that Olympic time, a severe concern with international terrorism finally hitting our shores because we had been amazingly safe from it. We can't afford not to check allegations of international terrorism occurring here. We have a lot of enemies out there. And we have had a lot of public threats that they will bring terrorism to us in our home base. They will get beyond taking our aircraft overseas and hit us at home. I don't think we can afford to pass up these cases. We will hit dry holes. And we have to be careful. And we have to fine tune as best we can by precedents and by guidance and some others.

Chairman BOREN. You had better explain that analogy to Senator Bradley and some others. [General laughter.]

Senator BRADLEY. I am quite familiar with that.

Ms. LAWTON. But will there never be another unproductive case in the bureau? No, I can't say that there will. There will be others that don't pan out. There will be informants we rely on who will betray us, if you will. It is going to happen; it is the nature of law enforcement.

We can give some guidance. One of the things the international Terrorism Section, and also the domestic Terrorism Section, I might add, is now doing is informally consulting when they are going to open a case about guiding the parameters of the case at the outset. This is not something that is in the guidelines. It is not something that is mandated. But it is something that the experience with this case and the investigation of this case and all the publicity about this case has prompted them to do on their own. And so now a couple of times the Terrorism Sections have come in and said we are going to approve the opening of this [deleted], but we want to get the instructions clear from the outset. This time. Help us to draft those instructions. And they will come over and meet informally. And with that sort of experience I think we will—that the system will work itself out. I don't think we necessarily need to write new rules. One of the problems, if you look at this thing, particularly in the Terrorism Section of the FBI, they have two sets of guidelines to deal with, of ever increasing length. And——

Senator BRADLEY. What are they?

Ms. LAWTON. The domestic intelligence guidelines—the domestic security/terrorism guidelines, and the international. And they are

different, quite different in format and in what they say, and in the amount of guidance they give for different sorts of situations, and then of course they have their own manuals. And then there are separate informant guidelines and their guidelines for this, that, and the other thing. If we paralyze them with guidelines, they will either ignore them or do nothing.

Chairman BOREN. Should the review then be more periodic? I understand that is a big problem but, seriously, we are talking about the rights of American citizens, and we have had thousands of man hours utilized. I think it is disturbing and chilling to have government personnel writing down license tags, attending meetings, and so on, concerning people who are doing nothing but exercising their First Amendment freedom. It is a chilling and damaging thing, not only for it to happen, but then for it to be revealed because it really makes people feel uneasy. It fuels this cynicism of the public toward agencies of government. And so here are five or six lawyers reviewing these on an [deleted] basis. Is that good enough? More rules and regulations are not the answer because you are really dealing with judgment calls. Should there be more periodic review, and should there be more resources devoted to the periodic review?

Mr. KORNBLUM. Senator, I would just like to complement what Mary said and perhaps contradict one point, an important one. First, with regard to the scope of the investigation, these first five pages on the [deleted] are called the administrative pages. They list, for example, all of the field offices investigating it. We don't get the administrative pages. Normally they don't go out of the Bureau.

Chairman BOREN. Oh? Would that be helpful for you to get it?

Mr. KORNBLUM. Well, it would certainly give us an idea——

Chairman BOREN. You would have realized, for instance, in this case, that it had a huge scope.

Mr. KORNBLUM. In the substance of the report, we see reporting from several, maybe half a dozen field offices—[deleted] and so on—but 6 is a lot different than 30 or more field offices.

Chairman BOREN. Absolutely.

Mr. KORNBLUM. Second thing, Mary said or perhaps you said something about the reservoir of knowledge about these cases and so on. Ten years ago the Bureau had a monopoly on all of the knowledge. Now things have shifted significantly. The five attorneys who have been doing FISA work on these cases have been there 7 or 8 years. As a result, we are in a better position than most of the Bureau supervisors who come in from field offices. They assume a case load of about 30 cases, most of which they have never seen or heard of before. But my attorneys have worked on those cases, if they are open several years, and so very often, my attorneys know more about the cases than the FBI agents do, simply because they have been working on them for so long.

The last fact you have to take into consideration, I think—although it may seem small, it is really crucial—is the quality of the report writing. It is not at all unlikely, as Mary indicated earlier, that the person who wrote the first, or the people who wrote the [deleted], were different and were unaware of what information or level of information or awareness was back at Headquarters and at

the Department. It is very, very common to get a 2 or 3 page LHM. And it is very, very common for us the flesh that out with additional information talking with the supervisors. I would agree with Mary very strongly that putting more rules down on paper—it is a question of the people applying the rules and how often they are applied perhaps——

Chairman BOREN. But maybe more of the administrative information should have been provided to start with. That would have red flagged for you how many offices were involved. Perhaps more periodic review or some strengthening of the size of your operation would allow an increase in the sort of verbal discussion, informal discussion, about the scope of an investigation, perhaps about reliability of informants and that sort of thing? Would that expand your ability to do that?

Ms. LAWTON. Well, it might, Mr. Chairman. And I can always throw people and dollars at problems, if you have got serious problems. Now obviously this committee is concerned as others are in the Congress about this case. But take this case in the context of all of the FCI cases or even just all of the international terrorism cases, from 1983 to 1988, and I think you will find it is pretty aberrational. Do we want to change the system for one case when the others seem to be working? I gave you a few that I thought had worked extraordinarily well, but there are others. Should the office be beefed up? Should my vault be expanded and the whole business because of one case? If we are going to look at this, it ought to be in the context of how the Bureau's international terrorism program working from 1983 to 1988. And I think the answer, Mr. Chairman, is mighty well.

OK, something is wrong, fix it. But whether we need to staff a bureaucracy because of one case is another question. I don't want an empire.

Senator COHEN. This is one case that we know about.

Chairman BOREN. That is the other problem, are there others lurking there because, on the basis of the Memorandum of Understanding, of the lack of time and attention you can devote to it? Are there other Frank Varellis that are the source of things that look very good when you have a very good writer of a memorandum, who may have no more information than the second person, who does not write so well but knows how to put the right gloss on it, I mean somebody who knows what you are looking for——

Ms. LAWTON. Oh, we are pretty good at looking between gloss and facts.

Senator SPECTER. Will you yield for one question?

Chairman BOREN. Yes, sir.

Senator COHEN. Provided it is not as long as the Chairman's last question. [General laughter.]

Senator SPECTER. It won't be.

At the outset, Ms. Lawton, I want to compliment you as publicly as this forum allows for your work. I have had a number of occasions to talk with you, and it is very refreshing to make an inquiry to you and to find the kind of professionalism that you and Mr. Kornblum have brought to that office. I know you have been there since 1960, and on the number of occasions when I have had to talk with you, it has been very, very good.

The one question I have relates to whether you might not formalize to some greater extent this informal verbal consultation in advance of the time that the FBI goes off onto an investigation. If someone like the two of you were to review the matter and take a look at the underlying facts, the hard facts, with your knowledge of the law and the First Amendment and balancing the risk factor against the constitutional right factor, you can provide insights in the course of 10, 15, 20 minutes that cannot be provided with endless amount of burdensome paper presentation. It reminds me very much of the initial experience of police departments on the search and seizure laws when Mapp vs. Ohio came down, and suddenly police officers had to comply with constitutional rights. And all of the instruction in the world and all of the guidelines meant very little to having an assistant district attorney sit down with police officers and review the facts for ten minutes and make a determination. In short, would it be realistic to have structured into the program a consultation period, perhaps limited to half an hour, where key agents meet with the lawyers in your department to make the factual, legal evaluation as to whether the matter ought to be pursued?

Ms. LAWTON. Well, whether it would be possible or not, Senator Specter—and thank you for your remarks—depends of course on what category of cases you are talking about. If you're talking about all of the FBI's foreign counterintelligence cases, including international terrorism, but also espionage and so forth, probably not practicable, particularly since some of these come up very fast and come up in the field and are handled out of the field. If, on the other hand, you're talking of only international terrorism or only international terrorism group cases or a smaller category, it's possible. I have some reservations about whether it's wise. One of the problems I have here is that I am afraid that we have, by too much—well, not too much, but by guidance, by reliance on the Department, by second-guessing after the fact—brought agents to point where they are afraid to use judgment. It's not now as bad as it was right after the Church and Pike committee hearings, but in those days they wouldn't do anything without checking and checking, and checking and getting permission, and getting someone else to put their name on it to protect them in the future. I wouldn't want to take them that far. Mandating the consultation is one way to put it, but you could create a situation where they're passing the buck instead.

These are professional investigators, they're supposed to be using judgment, they're supposed to be using good judgment. And if we take too much of that away from them and make them dependent on us, that would bother me. Now, there is no way we can mandate common sense for agents, but there is no way you can mandate common sense for the people in my office either. It would worry me. I don't know—that's why I kind of like the informal situation better than the mandated consultation. But it would worry me if we made them too dependent.

In 1975, they elected me their mother, but I am not their mother. And I can't protect them from everything.

Senator SPECTER. Well, without commenting on whether motherhood is an elected position or not, I would be inclined to disagree

with you. Judgment is honed, and judgment turns on a number of factors. Number one in this field is an understanding of some basic legal principles which are hard to really comprehend, and the second is applying those legal factors to factual situations. And I believe that someone experienced in your position can bring a tremendous amount to a situation in a very brief period of time. And without going on into it in any greater length at the moment, I think you can structure some standards which would distinguish, say, FBI work on a named individual where they have reason to believe that some violation of law is involved, contrasted with accomplices before the fact or after the fact, or the kind of widespread inquiry that turns out here, where you start to put others under surveillance. That is the kind of situation that I think would be rather easy to apply, to bring others into the picture. But it is not uncommon to have experienced lawyers work with investigators on determining questions like probable cause on arrest warrants or search warrants——

Ms. LAWTON. And on that, of course, they do, Senator, have to come to us. And there is the consultation. It's on the lesser techniques that we—the degree of intrusion determines when they have to come to us under the current guidelines. And on things like probable cause, yes, they have to. And they do have, Senator, their own legal counsel division, considerably larger than our office and made up of very competent lawyers. And they do consult their own lawyers, and the intelligence division has their own in-house legal shop in addition which they regularly consult. So we are not the only lawyers available to them.

Senator SPECTER. Well, I've gone on too long, but I think it ought to be pursued, and I think that when you go out of house there is just a tremendous difference. Just a tremendous difference. We had lawyers in the police department, and you will have a totally different view when an Assistant District Attorney takes a look at an issue. Thank you very much, Mr. Chairman.

Senator BOREN. Thank you, Senator Specter. Well, let's go to Senator Bradley, and then I'll ask two questions. I have one for Senator Murkowski and one for Senator Cohen.

Senator BRADLEY. Thank you, Mr. Chairman.

How many of these cases were begun between 1983 and 1988? How many LHM's have you received from 1983 to 1988?

Mr. KORNBLUM. [Deleted.]

Senator BRADLEY. And how many of those related to groups?

Mr. KORNBLUM. I have no idea, Senator. A small number.

Senator BRADLEY. I'm curious because you gave us a hint in an earlier answer to a question—I'm not sure which one of you. What if a group investigation was treated a little differently and required a little more scrutiny? And required a little closer look at the intelligence basis before commencing the investigation?

Ms. LAWTON. One of the problems, Senator, is we would have to define even further, I think, "group." Because in some of these cases I mentioned, and in some of the ones where we were successful, you're dealing with what I would call cells. Small units of five, six, seven activists—all of whom are involved in the bomb planning or the gun running or whatever it happens to be. In other cases you have the large group and the sort of problem you have here,

the mixed bag group. The best analogy I can give is in the area of support to the Provisional Irish Republican Army. You have your hardcore gunrunners—many of them in this country illegally. And then you have NORAID collecting funds for the poor children in Northern Ireland. There are people in NORAID, in my opinion, who know perfectly well that the children will never see a penny and that that's going into guns from Libya or wherever they come from.

There are others, there's the man with the canister on his bar who bleeds for the poor children, and he doesn't know where that money is going, and patrons who drop a quarter in don't know either. All of them are theoretically supporting terrorism, but how do you structure your investigation? When you get to those mixed groups—and I'm not totally convinced that this isn't still one of them—where you have some people genuinely supporting international terrorism and a lot of people supporting a cause without an awareness of terrorist elements in it, there is where the guidance is needed.

When you are talking about small cell groups, I don't think there is much need for the guidance.

Senator BRADLEY. You say that you're not convinced that CISPES is not one of those now. What has happened since the original case that you read to us in 1983? What has happened since then that would lead you to believe that it is a group in which there are international terrorists?

Ms. LAWTON. Nothing has happened since to change my mind, Senator. The problem is that CISPES, as a whole, I think, is not an international terrorism organization. But we had allegations about individuals here, we had these individuals, [deleted] that may indicate that there are a few people in this group that are a problem.

One of the things that you notice, Senator, in reading these, the longs lists of affiliated groups that demonstrate together with them. And there was a lot of criticism in the press about even mentioning these people in the LHM's. But some of them are people with terrorism track records.

Senator BRADLEY. Your source was who?

Mr. KORNBLUM. Excuse me, some of the things Mary just mentioned were deleted. We discussed this with staff yesterday. They're interested in how important the deletions, the deleted material, was to our determination regarding the probable cause in this case. And looking at the copy of the draft that you have, there are two or three really important pieces of information, as the one which Mary just mentioned, which are not available—have not been made available to the committee yet because of the third agency rule. [Deleted.]

Senator BRADLEY. [Deleted.]

Chairman BOREN. I think we have that now, as I understand. If I could, Bill, the question that Senator Cohen wanted to ask is directly related to what you were just probing. It's understandable there may be some individuals that might some day demonstrate publicly in an organization that has two thousand members and has affiliations with eighty other groups, church groups, labor groups, et al. But when you have a political organization, CISPES, an open, public, political organization, should there be some differ-

ent standards exercised in terms of opening an investigation? Senator Bradley is asking about this versus the case of opening an investigation against certain individuals who are the target of specific information from an informant about their activities, [deleted] and people like that. Should there be a different guideline for political organizations, as Senator Bradley was asking?

Ms. LAWTON. Yes, yes. There could be, certainly there is some guidance, but in a different context, in the foreign counterintelligence guidelines now. It wouldn't fit the CISPES context particularly, but it does say there [deleted]. We could write similar type rules for this—there are such rules in the domestic guidelines—and we could write similar rules in cases like this, saying what the domestic guidelines say: if you have an organization that is a mixed group, focus on the violent faction. You open on the faction, not on the whole.

Chairman BOREN. If that had been done, that would have been helpful in this case.

Ms. LAWTON. That could have saved a lot of grief, yes.

Chairman BOREN. So, you would not necessarily be opposed to rewriting the guidelines in that manner?

Ms. LAWTON. No, I think additional guidance can be given, and we have over the years. Major revisions of the guidelines don't occur that often. But over the years we have added things as unique problems have come up. And that sort of situation could be addressed.

Chairman BOREN. I want to add my voice to the comment Senator Specter made earlier. I think all of us on this committee have great respect for your professionalism, and let me say also, Mr. Kornblum, the candor with which you have answered today and the expertise that you've demonstrated creates a respect that is shared around this table, from all of our past associations as well. I would urge you to give some thought to, for example, including the administrative information that's been mentioned and perhaps being more specific as to guidelines for political organizations as opposed to individuals, in terms of trying to narrow the scope.

Senator BRADLEY. If I could just follow with one.

Chairman BOREN. You can go ahead, I'll be right back.

Senator BRADLEY. The FISA standard is more rigorous than the standard for these cases, is that not correct?

Mr. KORNBLUM. Absolutely, yes.

Senator BRADLEY. In other words, you know that you have to go to the court and justify, based on your intelligence, the case. Now, did it make any sense to say that there has to be at least a review of the quality of intelligence upon which you are basing your decision to pursue the case?

Mr. KORNBLUM. Well, that's built into the review—the [deleted] in the sense that——

Senator BRADLEY. But it's not as rigorous as the review you give for FISA case, right?

Mr. KORNBLUM. That's true.

Senator BRADLEY. Maybe you could describe to us what the difference is between the two in terms of rigor?

Ms. LAWTON. Well, Senator, if I could start with a description of the guideline structure. [Deleted.] That's different from putting a

tail on them. And putting a tail on them is different again from searching their homes, for which the Constitution requires a warrant.

And so you are going over a spectrum of things, and the guidelines structure itself makes those distinctions. [Deleted.] If you are into the Fourth Amendment intrusions, search and arrest, the Constitution says you need probable cause. We can't change that. And there we get the highest scrutiny because it's the most intrusive—the wiretap form of search, or physical search, or the arrest. The Constitution puts the highest level on those, and on those we also give the highest level. So we are structured now to increase scrutiny depending on the degree of intrusion. While people may find it objectionable, there is no constitutional protection against an FBI agent coming to your public meeting and listening to what is being said.

Senator BRADLEY. No, I am talking about having information provided by a criminal informant and then not vigorously trying to check that out through a variety of other intelligence sources.

Mr. KORNBLUM. Well, the reliability of the informant, other than asking rather standard questions, how does he—what position he is in that allows him to have access to this information, and does he have any personal bias which would color the information? Those are rather standard questions which we will ask, depending on upon how important the informant's information is to the case. But insofar as you were talking about the rigor, the difference in the degree of rigor in conducting an investigation, you're dealing with a relatively low-level decision; that is, it probably goes only up to the SAC at a field office, special agent in charge at a field office. And at Headquarters, probably no higher than the desk supervisor, who is about the same level as my attorneys, about a GS–14—about a 14, on average. Things like the FISA statute, which require the Attorney General's approval and the Director of the FBI's approval, do undergo more rigor for the legal reason, because they are more intrusive, and for the statutory reason, because it's required by the statute. It's not possible for the Director of the FBI or the Attorney General to focus on every one of these cases, and I think before you came we alluded to the difference between foreign counterintelligence cases in their early stages of development, where things are very amorphous, and they haven't really focused on people, as opposed to those that when they do; particularly when you are considering using something like electronic surveillance, which can be very intrusive, they just get a great deal more scrutiny at the Bureau, as well as at the Department.

Also, I think one of the factors I mentioned to the staff yesterday that you have to appreciate is that there may—everything isn't always what it would appear necessarily, that there is great unanimity in the work that's going on. Some offices are more skeptical about some of the work they're doing on some of the cases. In this case, in the CISPES case, the supervisor agreed with us readily that in 1985, that there just wasn't a case there.

Senator BRADLEY. In 1984, you said that there was—the reason it was not discontinued in 1984, there were some events that led you to believe that maybe the information that was developed from the

informant in 1983 still had some relevance, and you specifically pointed to a bombing.

Mr. KORNBLUM. Yes.

Senator BRADLEY. Now was that the bombing at the War College?

Mr. KORNBLUM. Yes.

Senator BRADLEY. And what was done to determine the relationship between CISPES and the bombing of the War College?

Ms. LAWTON. The FBI began a separate criminal investigation of the War College bombing, which as far as I know they have not resolved.

Senator BRADLEY. It is not resolved?

Ms. LAWTON. As far as I know, Senator. But I wouldn't necessarily see on the straight criminal cases what the results would be. And that information, if it had turned up any direct connection, would have been passed to the international Terrorism Section in the Criminal Division. The international terrorism is in the Criminal Division of the FBI, although separate from the people that would work the War College case. That bombing occurred not very long before we got that report. In the normal course of a criminal investigation, they wouldn't have resolved that issue at the time, I think. And again, when you're talking terrorism, it worries us that it's something that can't be ignored.

Senator BRADLEY. But how did you make the connection to CISPES? Rumors generated by the War College bombing focused suspicion on certain known terrorists, not CISPES. What is it that made you believe that it might not be them and that it might be CISPES instead?

Ms. LAWTON. Well, I wouldn't say that I ever believed that it was CISPES. I believed that it might have been. As the Bureau believed it might have been. And the——

Senator BRADLEY. Why?

Ms. LAWTON. Two things. One, CISPES was meeting—had a big sort of national meeting here in town going on at the time—and coupled with that, there was a phone call to a local radio station claiming credit for the bombing in the name of people in solidarity with El Salvador. They did not use the specific CISPES name, but they used a statement very close to the CISPES name. Now that says to me they are a suspect, not the only suspect, not the guilty party—we haven't proved that—but a suspect, which is what we were looking at here.

Senator BRADLEY. And now, today, how does that look?

Ms. LAWTON. I don't know, Senator, because I don't know anything about the criminal investigation of the War College bombing. I don't know what, if anything, was found by way of physical evidence or otherwise. I just have no connection with that.

Senator BRADLEY. Has the FBI conducted an investigation?

Ms. LAWTON. Yes, a standard criminal investigation.

Senator BRADLEY. Of the bombing?

Ms. LAWTON. Yes.

Mr. KORNBLUM. But the failure to connect up to those rather concrete facts, or relatively concrete facts, in the 1984 report by 1985 is what prompted our concern, and the quality of the information being reported in 1985 had altered dramatically. Nothing

which offered, say, lead potential was connected up in any way to CISPES by 1985.

Senator BRADLEY. So in the last 5 years you have had a certain number of LHM's——

Mr. KORNBLUM. LHM's, letterhead memorandums. Goes back to J. Edgar Hoover.

Senator BRADLEY. In that same period of time, how many FISA's?

Mr. KORNBLUM. Since 1979, since the FISA statute was approved [deleted].

Senator BRADLEY. [Deleted.]

Mr. KORNBLUM. Maybe [deleted] since——

Senator BRADLEY. So that you've had double the number of the more rigorous standard. And that implies to me that there are a lot more people involved in supervising those investigations than are involved in these lower-level counterintelligence cases.

Ms. LAWTON. Well, Senator, if I may, the Foreign Intelligence Surveillance Act applications are coming from both the National Security Agency and the FBI. It's not FBI exclusively. The time limit is only 90 days so that, in order to do one—the figure Allan gave you was applications—to do one person for a year, it's four applications. And many of them, you may say more rigorous standards, but the bulk of those applications deal with foreign powers and their establishments where probable cause is different, if it exists, therefore we do it. So in terms of United States person cases where you're focused on an individual—you're talking a far smaller number. I don't have it off the top of my head, although the Committee has the reports, the semiannual reports that break that out. But you're talking a much smaller number when you get down to those.

Mr. KORNBLUM. Probably [deleted]. You know, Miller, Walker, and people like that.

Senator BRADLEY. In retrospect, if you had looked at it more carefully, could you have seen Varelli as really not a good source?

Mr. KORNBLUM. Our level of review of the FCI cases really—it would be unusual to get down to the informant in great detail simply because most of the investigations are relatively unfocused. They were not really looking at a statutory requirement for probable cause.

Chairman BOREN. On behalf of Senator Murkowski, and it follows along with what Senator Bradley is saying—setting aside whether your own review process would have caught this. Looking back on this, should the FBI have stopped the investigation before you recommended stopping it in 1985, based upon what they had found out about Mr. Varelli and the lack of being able to come up with any substantial information, even with all these myriad numbers of field offices working on it?

Ms. LAWTON. Well, I don't yet know what they found out about Mr. Varelli, Senator, so I couldn't say on that score.

Senator BRADLEY. Someone has handed me a question here; I don't know which one of you should answer. Let me read the question from the collective body here. Mr. Varelli became a FBI source in 1980. He did not join CISPES until 1981. The CISPES [deleted]. Did the FBI even have to open this case? Or could they have run it

as a subcase under El Salvador/Terrorism? Do the guidelines really work then? Or do they merely push the FBI into a shell game, shuffling its penetrations of organizations from one investigative title to another. Whoever wrote that question, you may or may not take credit for it. [General laughter.]

Ms. LAWTON. The short answer is, Senator, I don't know, I don't follow it. How the FBI opens or captions a case is still something of mystery to me. They are sometimes driven by their file system, I think. But, I don't know that they had a separate El Salvador/Terrorism case going at the time. Maybe they did. But the question is not when they first started hearing from Varelli, it's when Varelli first started telling them specific things about [deleted] things that would trigger an investigation. The FBI runs a variety of informants and several types of informants. You have informants focused in a particular area, and you have others who are generic—the local bartender who is asked once a month about what is going on in the neighborhood. He is not assigned to any particular case, he just comes up with whatever he can come up with. And I don't know what category Varelli was in when they opened him as an informant. We don't generally focus in on that.

Chairman BOREN. Maybe I was too specific in talking about Varelli. But obviously here in 1984 you say, well, these allegations, and you've had the [deleted] which made some substantial predicate. If it were true, the allegations of [deleted] these other things, if they were true, they certainly would have laid a predicate. So allegations which are really the main thing you look at in that [deleted]—I can see how that is. The [deleted] the allegations were all still there, but not much evidence yet. And by the second year you look at this and you say, there's just no evidence here. This is really thin—they've had all these allegations for 2 years but no evidence turned up anything but First Amendment behavior here.

You see this as three blips on the radar screen, so to speak, plus the supplemental one which you don't have a record of having received. Three blips on the radar screen. But now the Bureau is seeing this week after week, month after month, internally, and they are seeing the investigative reports, they are seeing the raw data, they are learning about strange behavior of Mr. Varelli and a lot of other things. And just the fact that evidence has not turned up. Leave Mr. Varelli out of it for a moment. Just the evidence has not turned up.

Now, shouldn't the Bureau have stopped this investigation sooner?

Mr. KORNBLUM. Well, the guidelines really aren't intended to substitute the Department's judgment for the Bureau's. We're there for a safety valve. As a check.

Senator BRADLEY. But you were in this case ultimately?

Chairman BOREN. You had to. They didn't stop it, did they? They went back asking you to continue it.

Mr. KORNBLUM. Well, Mary and I didn't know about the Varelli case until the Civil Division came to us about a year ago and told us about what was happening.

Chairman BOREN. Well, let's go back to this. This is what sort of boggles my mind. I mean you said, and we quoted, what was said back to the Bureau: there is no evidence here of terrorism, you are

looking at First Amendment protected political activity, you should cease. Now, my question is—and maybe this is putting you on the spot—but internally a lot of this information was available to the Bureau. They don't just look at three blips on the radar screen. That field office is running it, then you've got Headquarters finally looking at it, and Headquarters agrees to resubmit. Why in the world would they ever submit that second annual report? Why didn't they just say we're closing this because we have found insufficient evidence? When they had all these field offices at work? You know this is very disturbing. Obviously, you picked it up and, from the way you worded it, you asked Ms. Lawton for guidance, and I would say the language was pretty strong.

Mr. KORNBLUM. Let me speak to that. Whenever we decide to tell the Bureau no, it is normal practice to double check with Mary and make sure——

Chairman BOREN. I understand.

Mr. KORNBLUM. But I just want to answer the shell game question that came up a few minutes ago. Since I left the Bureau almost 20 years ago, a lot has changed. And one of the things I have—in talking with the agents who are—my peers are all retiring now or just retired, like Tom Sheer up in New York—things have changed qualitatively, and it would be really difficult to hide someone like that in a subfile, particularly when if you are sending out work to 20 other field offices. The inspectors come in now, and they don't just look at—you know, the inspectors come in annually and read all of the files. My understanding is they would never let that happen. Simply because there is so many checks built into the system, everybody can get into trouble. The only answer I would have, or might be able to suggest, about Varelli and the delay is that perhaps they weren't sure of his legitmacy. And, I mean, I don't know because we didn't know anything. We didn't know who Varelli was until the lawsuit was filed, and the Department was involved, and the civil attorneys came to see us and asked what—we told the civil division what we told you. We reviewed the case, there seemed to be something to it when it was initiated, but after a while it all evaporated. There was never any corroboration of the key allegations.

Chairman BOREN. Let's suppose nothing strange had ever turned up about Varelli other than the fact that all the tips he has given them just never panned out with corroborated evidence. Now suppose there is nothing but the absence of evidence. That alone, I would presume, is essentially on what you recommended closing the case, just the lack of any substantiation of the allegations. Not some crazy behavior by Mr. Varelli. So why in the world didn't the Bureau shut this off sooner themselves? They knew that no evidence had been gathered.

Mr. KORNBLUM. It is this right here. Is the glass half full or half empty? It is just the perspective.

Chairman BOREN. Well, but you found it pretty clearly not even half empty, not even half full—you found it almost totally empty.

Ms. LAWTON. Well, what we found, Senator, please, is that the LHM on which we were asked to make a judgment was empty. That does not say that the bureau files were. Now maybe they were also.

Chairman BOREN. But they did not come back and contest your recommendation.

Ms. LAWTON. They did not come back, and therefore we have to assume that.

Chairman BOREN. So we have to assume that if they had had something they really felt strong about continuing, they would have come back to their half full glass.

Ms. LAWTON. But there are instances in which they have. The fact that we say that——

Chairman BOREN. Let me go back to my question because it has not been answered. In retrospect, knowing of the lack of evidence and of the fact that, after you made your recommendation, the Bureau didn't come back and say, oh, the glass is half full, they didn't come back and contest it at all—to this day, we have not found any significant evidence based upon Mr. Varelli's information to back up that any of these things were necessarily true. I am talking about the organization. [Deleted.] Now, therefore, in retrospect, shouldn't the FBI have shut down this investigation sooner? They are not just looking at three blips. They are continually looking at this over a 2-year period.

Ms. LAWTON. Well, that is where Allan is talking about the different perspective, Senator. And we see it in various capacities. The——

Chairman BOREN. From your perspective, should the FBI have shut down this investigation sooner?

Ms. LAWTON. We think that they ought to put a harder time line on some of these things than they do. They take the position that if we said it was okay to begin with, then renewal is okay forever. We often see that perspective.

Chairman BOREN. That is what I am worried about.

Ms. LAWTON. And really we don't have that perspective. And so we look at them harder and put them to it. But not all of these develop fast. There are instances where it can be a very long time building, and you don't want it to close. It depends on each fact situation.

Chairman BOREN. There are times when you have to be persistent. But obviously this looks like——

Ms. LAWTON. And you have a lot of turnover. One of the problems we have is new supervisors trying to play catch-up. He is going to assume that his predecessor was correct until he does catchup.

Chairman BOREN. That is right. Mr. Kornblum, would you agree with that?

Mr. KORNBLUM. Yes, I would. I think the institutional dynamics are very important to the process.

Chairman BOREN. But here you think they went on longer than they should have gone on?

Mr. KORNBLUM. Yes.

Chairman BOREN. OK. Bill, do you have any more questions?

Senator BRADLEY. Mr. Chairman, I just want to thank the witnesses. I have found this extremely informative and helpful. And I think that you have been very forthcoming and, as one member of the committee, I would like to echo the Chairman's words and just

say that it has been a pleasure to participate in the hearing, and I appreciate it.

Chairman BOREN. I want to conclude again by saying how much I appreciate the time and the energy that you have devoted to being here today and preparing for it. Let me say I wasn't trying to put you on the spot concerning the perspective that you have outlined—I know you have to work on a daily basis with the Bureau—nor am I trying to be unfair to them. I realize we are analyzing something after the fact. Most of us on a day-to-day basis don't have the chance to reflect on our decisions as much as we would like. It seems to me that time for reflection is what is in most short supply in all of our lives in the system in which we operate. So I didn't want to put you on the spot, but I think it is important that we make these judgments.

Let me just say that I really value your recommendations, either formally or informally back to us or in the form of a letter, of anything else after we think about this a little longer. I am not one that rushes out wanting to throw more money, more regulations, or more bureaucracy and so on at a problem. I think a lot of times individual aberrations end up making terrible precedents and procedures that are followed and misapplied in a thousand other situations because you are trying to take care of one aberration.

But it does seem to me that we should attempt to strike a reasonable balance and improve at the margins the process as much as we possibly can as a result of this experience. So I would really welcome your thoughts. Perhaps one of the things we might consider is what was mentioned, the addition of five pages of administrative information that might be included as a normal course in the reports to you. The consideration of separating out political organizations specifically in the guidelines as opposed to individuals that would be a part of these organizations. Trying to figure out if there is a way to differentiate the large, publicly active, political-type umbrella organizations so that we could narrow the scope to maybe a faction of an organization or certain individuals within an organization. And perhaps some additional way we could find more ways to make an objective judgment about the informant. If you are really basing a whole case on the value of one or two informants—and that may be what happened here, at least in the initial stages of it—there may be some way of requiring that you perhaps get a little more information. I realize you can't micromanage, and you can't go in and make all those judgments. I am talking about at the margins. We would really value your thoughts as you think on these things. Speaking just for myself, I certainly don't intend to try to rush out and legislate a bunch of changes or throw $5 million at it and hire 100 new lawyers or something like that.

Ms. LAWTON. Washington needs more lawyers, Mr. Chairman. [General laughter.]

Chairman BOREN. Well, there is some agreement behind me, but—[general laughter]. I may be an unemployed lawyer some day, so I had better keep an open mind on that subject.

But we would value your thoughts on how we might improve this process at the margins. We are impressed with your grasp, both of you, of what it is we are dealing with. We are impressed by the thoughtfulness of your expressed policy viewpoints. Of course, you

have this wealth of information, from dealing on a daily basis that none of us have, for ideas to make this system work. I hope that you would take the time to sit down and put some thoughts in writing to us, again, not with the intent that we would utilize them in a destructive manner to hit others over the head, but simply to try and see if there is some constructive lesson we can learn from this for the future.

Thank you, and we will stand in recess.

[Thereupon, at 12:39 p.m., the committee was recessed.]

SENATE SELECT COMMITTEE ON INTELLIGENCE INQUIRY INTO THE FBI INVESTIGATION OF THE COMMITTEE IN SOLIDARITY WITH THE PEOPLE OF EL SALVADOR [CISPES]

WEDNESDAY, SEPTEMBER 14, 1988

U.S. SENATE,
SELECT COMMITTEE ON INTELLIGENCE,
Washington, DC.

The Select Committee met, pursuant to notice, at 9:34 a.m., in room SH-216, Hart Senate Office Building, the Hon. David Boren (chairman of the committee) presiding.

Present: Senators Boren, Nunn, Bradley, DeConcini, Metzenbaum, Cohen, Specter and Hecht.

Also present: George Tenet, staff director; James Dykstra, minority staff director; Sven Holmes, chief counsel; Britt Snider, minority counsel; Kathleen McGhee, chief clerk; and John Elliff, Marvin Ott, James Currie, Fred Ward, Chris Straub, Charles Battaglia, Paul Joyal, Steve Miller, James Wolfe, Blythe Thomas, Jeanne McNaughton, Dwight Howes, Keith Hall, Edward Levine, and Robert Morgan, staff members.

Chairman BOREN. I think we will go ahead and commence. There are other members of the committee that are on their way, but we do expect to be interrupted at one point by a vote. So I think it is important for us to start.

We are here today to receive a report by the Director of the FBI concerning the findings of the FBI's internal Inspection Division inquiry on the 2-year investigation by the Bureau into the Committee In Solidarity With the People of El Salvador, known as CISPES. This investigation was opened March 30, 1983, and closed on June 18, 1985.

The issues we are here to discuss are important ones. They go to the very heart of what this country exemplifies. While many aspects of these issues could have been classified and, therefore, subject to hearings behind closed doors, it was my belief that the American people deserve an answer regarding what, at the very least, appeared to be an intrusion upon their Constitutional rights.

While we would like to give the FBI every tool necessary to combat the activities of foreign agents, terrorists, and others who pose a threat to our national security, we must ensure that the resources and tools we provide the Bureau are never used to invade

the civil rights and liberties of the American people. That is a joint responsibility of this committee, to first assure that the bureau has the tools that it needs to effectively combat those who threaten our national security, and at the same time to provide oversight to make sure that those tools are not abused.

It is the very respect for those inalienable rights and liberties that differentiates this nation from the repressive societies of this world, where the freedoms of speech and political association are not rights, but rather are rewards for compliance with the wishes of those who oppress their people.

Most importantly, we must ensure that the rights of our citizens to conduct lawful political activity and their inherent Constitutional right to the freedom of association is in no way impaired by ill-conceived investigations over which little judgment or proper supervision is exercised.

So with these fundamental freedoms at stake, it is the duty of this committee to be vigilant watchdogs, to make sure that the appropriate authority we provide our law enforcement agencies is not abused.

As you will recall, the Senate Intelligence Committee began its work on this matter after certain troubling documents related to the case were released this past January, pursuant to a Freedom of Information Act request. This committee has jurisdiction in this matter because the 2-year FBI investigation was opened and conducted pursuant to the classified Foreign Counterintelligence—FCI—guidelines. At the same time, we share responsibility over the Bureau in this area with the Senate Judiciary Committee, and we have invited members of that committee to be present today. And, of course, some of the members of our own committee are members of the Judiciary Committee.

Before we hear from Director Sessions, I would like to note that, since our committee's first hearing with Director Sessions on February 2, 1988, the Intelligence Committee staff has completed an exhaustive study independent of the FBI's internal inquiry. This committee staff effort has involved the examination of over 2,200 classified documents, including more than 11,000 pages, as well as interviews with certain personnel at the FBI, at the CIA, and at the Department of Justice. Thus, the committee is in a unique position not only to receive the report of the Director of the FBI, but also to evaluate its contents.

At this time, I would like to review certain restrictions for the conduct of the open hearing today. These operating procedures are necessary because the Attorney General's guidelines, as I have mentioned, under which the CISPES investigation was conducted, are classified. These operating procedures represent a good faith effort to reconcile the compelling need for public discussion of this matter with the Bureau's strongly expressed concern that, if we are not careful, an overly broad public discussion of this investigation could convey a detailed picture of the classified contents of the guidelines to those, of course, who might engage in espionage against the United States. It is not the desire of any of us, either at the Bureau or of this committee, to see those procedures and guidelines disclosed to those who are abusing our system and trying to obtain the classified information.

Under these operating procedures, we should be able to have a full discussion of all important aspects of the matter while using terminology that does not convey the specific provisions of the classified Attorney General's guidelines.

Specifically, the operating procedures make only the following items off-limits at this public session:

First, terms of art as used in the classified documents;

Second, specific references to what the guidelines authorize or restrict; and

Third, specific reference to what the guidelines prohibit—that is, what actions violated exactly what provisions of the guidelines. We will talk more in policy terms today rather than with specific reference to the classified documents.

This does not mean that the activities, violations, or techniques used by the FBI cannot be discussed. They will be discussed in this hearing. Rather, only that the terminology must be general and cannot refer specifically to the provisions of the guidelines. Thus, we may freely discuss:

The facts of specific violations or possible violations of "applicable policy," but not the nexus between the facts and specific guideline requirements.

The facts of the use of specific techniques, including the extent of the use of these techniques, but not with reference to the guidelines.

Or the facts regarding spin-off investigations and generally the techniques that are used in these spin-off investigations without referring specifically to the classified guidelines.

Finally, before I turn this matter over to the Vice Chairman and other members of the committee for opening statements, I would like to say to Director Sessions that I have reviewed the results of your Inspection Division's internal inquiry. I am impressed by the comprehensiveness and the candor of that inspection report which has been, of course, made available to the committee in preparation for this hearing, except for the conclusions and the actions you intend to take which we will learn for the first time in this hearing. Further, in working with you and your staff, it is clear to me that you share the desire of this committee to lay out all the facts of this matter before the American people, to address what needs to be done to improve the Bureau while protecting the rights of our citizens, and to move forward from there.

I want to express my appreciation to you and to your staff. Obviously, I think what we have accomplished here is an example of what the oversight process should do: point out problem areas, meet our own responsibility to be an effective oversight committee, be a watchdog for the citizens, and at the same time work constructively with the Bureau. The Bureau has responded in a very timely and cooperative manner. The Bureau has put its resources to work to help us uncover the facts. I think the way in which the investigation has been conducted on both sides, here at the Capitol and also internally within the Bureau, is a model for trying to get to the bottom of the facts, lay them out, and then make judgments. I appreciate very much the cooperation that we have received and the amount of information that has been provided to us without us

having to try to force that information to be provided. I appreciate how much has been volunteered to us.

Director SESSIONS. Thank you, Mr. Chairman.

Chairman BOREN. I will now turn to Senator Cohen, our Vice Chairman, for any opening comments that he might care to make.

Senator COHEN. Thank you, Mr. Chairman. I want to join with you in welcoming Director Sessions to the committee and looking forward to his testimony.

I also want to join you in commending the Director for initiating what appears to have been a thorough and objective internal review of the FBI's handling of this case, and for his willingness, as you have indicated, to share fully with us the results of that review. I think the public should recognize that this has been an extraordinary effort and that the candor and cooperation we have received from the FBI has been equally extraordinary.

Like most Americans, we expect a lot from the Bureau. We expect it to keep track of international terrorists within the United States, as well as those within the United States who support activities in other countries. We expect it to prevent terrorist incidents within the United States, to protect the lives and property of Americans. And we expect it to enforce the law against those who may violate it. There are few who want to hamstring the Bureau in carrying out these functions so vital to the public safety and welfare.

On the other hand, we want some judgment applied to these activities. We have a Constitution and a Bill of Rights which protect us against unreasonable intrusions, which protect our right to differ with the policies and positions of the government without fear of official retribution, and which protect our right to associate with whom we choose. We want management, supervision, and oversight of FBI activities which ensure they do not stray over these constitutional boundaries.

Now, normally, it's there. But with CISPES, it was lacking. The activities which took place in the CISPES case did not result from any change in FBI policy—the restraints on investigative activities which had been developed to protect the legitimate exercise of constitutional rights are still in place. Nor did CISPES result from any deliberate and systematic effort on the part of the FBI to pry into the constitutionally-protected activities of the sort that took place back during the Vietnam War era.

What we do have here is a case that was begun in 1983 to determine the truth of allegations about an organization which was reportedly providing assistance to a terrorist group within El Salvador in possible violation of U.S. law. It was later expanded to include indications of possible participation in terrorist acts within the United States.

But once underway, the investigation lost its focus. The initial allegations, largely the product of a single informant, were never verified, although there were good reasons to raise questions about the informant, as well as many of his reports. Rather they became the basis for a vast expansion of the investigation, sweeping in many domestic organizations and individuals who were in no way implicated in activities covered by the original allegations. A great deal of unnecessary information was collected, much of it concern-

ing constitutionally-protected activity, having nothing to do with the original purpose of the investigation. Investigations were opened without adequate justification and techniques utilized that were neither appropriate nor appropriately authorized.

For these shortcomings, FBI supervisors must be held accountable. CISPES was, for the most part, a failure of management, rather than a failure of policy. The bureaucratic checks and balances which normally attach to FBI investigations of domestic groups engaged in legitimate political activity were not very evident here. Even where the bureaucratic mechanisms were followed, they failed to provide an accurate picture of what was taking place. Indeed, there seems to have been a surprising insensitivity among FBI supervisors that this case presented any special problems. And while there were occasional words of caution sent to the field, they were often coupled with instructions to broaden the investigative effort. If nothing else, the reams of paper coming back to the FBI headquarters from the field should have suggested to supervisors that the investigation had spilled over its banks and was producing very little to substantiate the allegations which generated it. But they did not. It was eventually left to the Justice Department to call the investigation to a halt in June of 1985.

And so, while we await Director Sessions' description of the details, my conclusion is that we had an investigation that went on too long and far exceeded its legitimate scope.

Some may say, "true, but was anyone really hurt by this?" I think the answer has to be "yes." There may not have been tangible harm done to any of those groups or individuals involved in constitutionally-protected activity, but I believe that investigations of this type can only have a debilitating effect upon our political system. When people see that this can happen, many will be wary of associating with groups which disagree with the government; many will be more wary of what they say and of what they write.

And while the Bureau must be permitted a certain amount of latitude in terms of keeping track of organizations within the United States which are suspected of supporting terrorists, we cannot lose sight of the fact that the ultimate purpose of such investigations is to protect the rights and property of Americans. If we trample upon such rights in the process, we end up sacrificing precisely what we are trying to protect.

In short, the FBI must be and must be perceived as an instrument to ensure our safety and not as one to erode or undermine our liberties.

In closing, Mr. Chairman, I would like to make just three further points.

It ought to be recognized that the vast majority of organizations and individuals whose names appeared in the FBI documents previously released to the public, which prompted this investigation in the first place, were not the subject of FBI investigations. Their names were simply mentioned in the CISPES files. There did turn out to be a large number of other organizations and individuals who were investigated as a result of their contacts and associations with CISPES. Director Sessions undoubtedly is going to be covering these in his testimony, but they do not match up with those already identified publicly.

Second, I want to say a word about the timing of this hearing. The committee would have preferred to have held it in July or August when the atmosphere would not have been so politically charged. We expressed this view to the FBI, but the Bureau declined, explaining that it was not yet prepared to submit its report to the committee. We deferred until the FBI was ready. And I would commend the FBI for not being pressured to come before it had completed its investigation.

And finally, while it may be tempting in this political season to lay this at the feet of the White House, I want to emphasize that neither the FBI itself nor the committee found any evidence whatsoever that this investigation was prompted or directed or influenced in any way by anyone at the White House. It was initiated and controlled by the FBI alone, which must remain accountable.

And with that, I would conclude and await the testimony of Director Sessions.

Chairman BOREN. Thank you very much, Senator Cohen.

Senator Specter, any opening comments?

Senator SPECTER. Yes, thank you very much, Mr. Chairman.

Judge Sessions, I am pleased to see in your opening statement today that you have come to grips with the deficiencies in the investigation that was conducted as to CISPES. I think it might be appropriate to say what CISPES is: Committee in Solidarity With the People of El Salvador. And the investigation by the FBI in this field is particularly sensitive because it involves First Amendment rights. Investigations against alleged terrorism are vital, and the FBI obviously has a very important role in that area. But when you deal with the issue of political expression or First Amendment rights, then there is a unique circumstance which requires extra care. U.S. policy in El Salvador has been very widely debated and very controversial. Whether or not we agree with the people who express an opposing point of view, under our system it is vital that their rights of freedom of expression be protected.

I believe that much good can come out of this inquiry for a number of reasons. One is that there is a candid recognition by the FBI from its Director that serious errors have been made, as you put it in your statement, procedures were flawed, and there is a recognition that there was an insufficient predicate—that is, a basis to proceed. And had the informant Varelli been questioned or checked, that there would have been a change in the breadth of the investigation.

I think it is also significant that the Intelligence Oversight Committee has performed, I think, a very useful function of reviewing up this matter. We had hearings back in February, and we are having the follow-up hearings now. In a democracy, that is the way oversight ought to function—to provide that assistance.

I believe there is still a very important issue which we have to face up to as to whether this investigation should have been started with the foreign counterintelligence guidelines, as opposed to the domestic terrorism guidelines, because had it been under the domestic terrorism guidelines, there would have been substantially greater protection for those who were subject to the investigation.

I think it is very important that we learn from this experience and that we address the question as to whether there are any structural changes that ought to be made.

Judge Webster has the confidence of this committee as he works on the CIA and had the confidence when he was FBI Director. You have the confidence of this committee, and your personnel have the confidence as well. But then the question arises, how did this occur? There is a very basic management problem, and you have a very big organization. What we have to do is take a look at the structure to see if changes are necessary.

We have talked about an Inspector General for the CIA; we have talked about Inspectors General for various branches of the government generally. I don't know if that is necessary for the FBI. I don't know if we want to have any cumbersome additional procedures for you. But when we have an investigation like this where everyone agrees at this juncture that there have been very significant problems, then I think that is something that we have to consider. But we ought to learn from our mistakes here.

On the issue of discipline, I think, is a very important question, and it has to be addressed; you are the Director, you have to establish the timetable for that. But I think beyond any question, that issue has to be addressed squarely in terms of what is appropriate. I am not in the position, I don't think the committee is, to address that, at least not preliminarily, until you have spoken to the issue.

But I, frankly, am pleased to see that as much progress has been made on this subject, and we ought to—in a democracy—learn from our mistakes, and I am very pleased to see the approach you have taken in your prepared statement.

Thank you, Mr. Chairman.

Chairman BOREN. Thank you very much, Senator Specter.

Senator Metzenbaum, opening comments?

Senator METZENBAUM. Director Sessions, I am glad to see you here this morning.

Director SESSIONS. Good morning.

Senator METZENBAUM. And I want to say that, for one who has been around a few years, it is rather refreshing to have an agency—the FBI—come before us and, instead of trying to gloss over the realities of that which had transpired at an earlier point, rather acknowledge the fact that there have been mistakes made and that things probably could have been done differently. I think it is to your credit that you have seen fit to do so, and I think it only adds luster to your own image and the department's image to be doing that. I am aware of the fact and have been particularly sensitive about the fact that in the Department of Justice itself, we have not had that kind of a situation for the past several years, and it has been quite disappointing. I am optimistic with new leadership that that will no longer be the case.

As pertains to this particular matter of CISPES, I think you well know that by reason of the FBI's activities on the campus of Xavier University, it was of particular concern to me. I discussed this matter with you in private sessions of this committee as well as in public sessions, and I feel particularly pleased that the FBI's conclusions in this instance are factual and deal with the subject fairly. I am looking forward to hearing your statement as well as to

inquiring of you with respect to a few matters—but not too many, as a matter of fact.

Chairman BOREN. Thank you very much, Senator Metzenbaum.

Senator Hecht.

Senator HECHT. Thank you, Mr. Chairman.

I join the Chairman in welcoming this chance for you to clear the record on this matter. I want to thank the Chairman and Vice Chairman for the even-handed common sense manner in which they have managed the committee's inquiry into this case.

Director Sessions, I look forward to your testimony and answers to questions with great interest, although I am supposed to be at two other appointments at the same time and may have to get much of your report from the record.

From reports I have received to date, I am impressed by the deliberate, thorough investigation and the evaluation you have completed. As we saw at the outset of this committee inquiry, these cases have great potential for public posturing and handwringing and angry reaction from the government agencies involved. This has largely been avoided in this instance, and I think the American people benefit from this more rational approach.

I was dubious about the net value of this inquiry when the committee first started it, but I am hopeful that your report will show that both the FBI and committee costs have been justified.

And if I might just close on a personal note, as I mentioned to you earlier, I am very, very impressed with the personnel you have in the FBI. Obviously in the State of Nevada I have had occasion the last 6 years to work with them very much, and all around America, and I am very, very proud of your personnel.

Chairman BOREN. Thank you very much, Senator Hecht. Senator Bradley?

Senator BRADLEY. No statement.

Chairman BOREN. Judge Sessions, we welcome you again to the committee, and as we are in an investigative mode today rather than in just an information gathering session, I would request that you stand to be sworn at this time.

Do you swear that the testimony that you will give is the truth and nothing but the truth?

Director SESSIONS. I do.

Chairman BOREN. Thank you very much.

Would you state your name for the record and your position?

Director SESSIONS. My name is William S. Sessions, and I am the Director of the FBI.

Chairman BOREN. Director Sessions, we would welcome your opening statement at this time.

Director SESSIONS. Thank you, sir.

At the invitation of the committee, I have also brought with me Deputy Assistant Director Carroll Toohey of the Bureau's Inspection Division, and of course the Chair and the Senators are familiar with Mr. Toohey and with his work product.

STATEMENT OF WILLIAM SESSIONS, DIRECTOR, FEDERAL BUREAU OF INVESTIGATION, ACCOMPANIED BY DELBERT C. TOOHEY, DEPUTY ASSISTANT DIRECTOR, INSPECTION DIVISION, FEDERAL BUREAU OF INVESTIGATION

Director SESSIONS. I might add before I begin my statement, Senator, that I am extremely pleased to be here and I would echo the words of the Chairman and of the other illustrious Senators who have noted the importance of the investigation and the manner in which it has been carried out.

I am here today at your invitation to discuss the FBI's investigation of CISPES—that is, the Committee in Solidarity with the People of El Salvador. CISPES, a group headquartered in Washington, D.C., with branches throughout much of the United States, first became the subject of an FBI investigation in September of 1981. At that time, the Department of Justice asked the Bureau to determine whether CISPES was in compliance with the provisions of the Foreign Agents Registration Act. This legislation requires that persons acting in the United States or on behalf of foreign governments or entities register with the United States government. Although it was established at that time that CISPES published literature endorsing the objectives of two organizations known to be Salvadoran terrorist groups—that is, the Salvadoran Democratic Revolutionary Front, the "FDR", and the Farabundo Marti National Liberation Front, the "FMLN"—no violation of the Foreign Agents Registration Act was discovered, and this limited investigation, as you know, was completed 3 months later in December, 1981.

Subsequently, in March of 1983, based upon information furnished by the Dallas field office of the FBI, the Terrorism Section of the Bureau's Criminal Investigative Division at FBI Headquarters in Washington authorized the opening of a new investigation of CISPES to determine the extent to which its prior endorsement of foreign terrorist organizations had become active financial or other support. This investigation was also intended to determine the extent of any control of CISPES by the FDR or the FMLN and to determine whether CISPES was planning terrorist activities in the United States.

The information furnished by the Dallas field office came from several sources. Chief among them was a Central American expatriate named Frank Varelli. Varelli had become an FBI asset, a term meaning "intelligence source." That happened in 1981. As is customary, he was assigned to a special agent in the Dallas office for monitoring and operating. Varelli alleged that CISPES was under the direction of the previously mentioned foreign terrorist organizations, that CISPES was providing financial support to those organizations, and that CISPES was preparing for terrorist activities in the United States.

The information Varelli gave to his case agent in Dallas was in turn given to that agent's supervisors in Dallas for review. It was eventually passed along to the operational desk of the Terrorism Section in Washington, where the investigation was opened and from which the investigation was coordinated for all of its twenty-seven month duration. Although CISPES was located in the United

States, the investigation was classified as an international terrorism investigation because the question of whether the group supported foreign terrorist activities, or was in turn supported by foreign terrorists, was the major focus of the investigation.

For much of 1983, the investigation was narrowly focused. It concentrated on CISPES headquarters in Washington, on its Dallas chapter, and on a handful of its other branch chapters. The major turning point in the investigation came in October, 1983, when the Terrorism Section of the Criminal Investigative Division at FBI headquarters sent a teletype seeking additional investigative support in the CISPES investigation from every field office in the FBI, thereby effectively making the scope of the investigation nationwide. The then approximately 180 CISPES chapters throughout the United States thus became subject to investigation, and over the next 18 months numerous other investigations arising out of the CISPES investigation, which are sometimes referred to as spinoff investigations, were conducted.

The CISPES investigation used many standard investigative techniques. Among them were checks of public records and sources, photographic and visual surveillances, undercover attendance at meetings, reviews of financial records pursuant to the provisions of the Right to Financial Privacy Act, trash checks, checks of telephone and utility company records, checks of records of license and credit bureaus, checks of records of law enforcement agencies, and limited personal interviewing of CISPES members.

The investigation continued throughout 1984 and into 1985. As was and is required by the Attorney General Guidelines for foreign intelligence collection and foreign counterintelligence investigations—which govern the conduct of international terrorism investigations by the FBI—periodic reports on the CISPES investigation were filed with the United States Department of Justice. These reports initially set forth the predication for opening the investigation and thereafter set forth the basis for continuing it. The first two such reports were approved by the Department of Justice as satisfying the applicable requirements of the Attorney General Guidelines.

Then, in response to the Bureau's report in March, 1985, the Department questioned whether sufficient basis existed to continue the investigation, and on June 3, 1985, the Department advised the Bureau that the case no longer appeared to satisfy the standards in the Attorney General Guidelines for an international terrorism investigation. Fifteen days later, the CISPES case was closed. No substantial link between CISPES and international terrorism activities was ever established.

Shortly after I became Director of the FBI in November, 1987, and soon after I became aware of the interest of Congress in this matter, I ordered the Inspection Division of the FBI to conduct a full and in-depth inquiry into the CISPES investigation. In particular, I asked to be advised of whether the Bureau had violated any legal or constitutional provisions, executive orders or Presidential directives, Attorney General Guidelines, and/or internal FBI rules, regulations, or policies during the CISPES investigation. I asked whether any direction had been received from the White House concerning the investigation. I also asked whether the discretion

and judgment used in conducting the investigation were appropriate.

The investigation was conducted by experienced inspectors, whose mandate from me was to leave no stone unturned in assessing the CISPES investigation and in reporting that assessment to me. My inspectors reviewed over 375 major files, including all headquarters and field office CISPES investigative files, as well as the case files on individuals and groups that were opened as a result of the CISPES investigation. They conducted extensive interviews of field and headquarters supervisory personnel, of the case agents who handled the investigations, and of the agents who were assigned various investigative responsibilities relating to CISPES. The inquiry, and an earlier investigation conducted by the Bureau's Office of Professional Responsibility into allegations made by Frank Varelli, took several months and cost approximately $800,000, only slightly less than the cost of the entire CISPES investigation. This was an extensive and thorough inquiry. I am here today to highlight what my inspectors found and—more importantly—to tell you what I intend to do about what they found. Here are the major conclusions of my inquiry:

1. Absent the information provided by Frank Varelli, there would not have been sufficient predication for an international terrorism investigation of CISPES. The case pivoted on the information Varelli provided, and there were clear deficiencies, both operational and supervisory, in the way in which Varelli was handled. His background and reliability were never investigated adequately, and during much of the investigation the accuracy of Varelli's information was not adequately verified. His activities were inadequately supervised. By the time it was realized that Varelli's information was unreliable, the investigation had been underway for approximately one year. The investigation would not have developed at it did had Varelli's reliability been properly scrutinized at the outset.

2. The original focus and intent of the CISPES investigation were to determine the extent of monetary and other support by CISPES for terrorist movements and activities in El Salvador; to determine the likelihood of CISPES conducting terrorist activities in the United States; to identify those individuals who knowingly supported terrorist groups in El Salvador through efforts in the United States; and to determine the extent of any control over, or influence on, CISPES by the FDR or the FMLN. This focus was proper, given the information available to the Bureau at the commencement of the investigation. At the beginning, the investigation was confined to Washington and 10 other field offices, and personnel were specifically instructed not to assume that rank-and-file members of CISPES knew anything about, or were involved with, the funding of terrorist activities in El Salvador. They were also specifically instructed that the investigation would not be directed toward the exercise of rights guaranteed by the United States Constitution, instructions that were periodically repeated during the investigation.

3. The major problem came when the scope of the investigation was unnecessarily broadened in October of 1983. It remained unnecessarily broad thereafter. The broadening of the investigation in

October, 1983, in essence directed all field offices to regard each CISPES chapter, wherever located, as a proper subject of the investigation. Based on the documentation available to the FBI by October, 1983, there was no reason to believe that all CISPES members nationwide knew of or had any involvement in support of El Salvadoran or U.S. terrorists. Thus, there was no reason to expand the investigation so widely. The focus should have been on CISPES national headquarters in Washington, D.C.; indeed, at one point FBI Headquarters told the Washington field office to get ready to assume principal responsibility for the case but then failed to issue the necessary orders to bring this about. The decision to broaden the investigation unnecessarily was made at a comparatively low level, and, put simply, the supervisory personnel at FBI Headquarters who should have reviewed and analyzed this decision and appreciated its significance failed to do so.

4. After the investigation was expanded in October, 1983, many of the investigative activities that I described to you earlier could not reasonably have been expected to accomplish the goals of the investigation. Instead, these activities caused information on rank-and-file members who had nothing to do with international terrorism to be included in FBI case files.

5. Important aspects of the process by which the CISPES investigation was managed at certain levels of FBI headquarters were flawed. There was no automatic reminder or "tickler" system in place to ensure timely and appropriate review of incoming information. The field agents collecting information on CISPES could reasonably have assumed that the information would be properly reviewed at FBI headquarters; but in many cases it was not; it was simply placed in files and left there. Similarly, some requests for guidance from the field went unanswered at FBI headquarters. The personnel responsible for the supervisory system as it then existed at FBI headquarters failed to ensure that the activities of those conducting the investigation were properly reviewed.

6. Earlier I spoke of the investigative techniques that were used in the investigation. It is important to note that certain other techniques, generally more intrusive in character and nature, were not used—such as electronic surveillance, consensual telephone monitoring, and court-authorized searches—although there was one instance in which information obtained from local authorities based on a local search warrant resulted in the opening of an investigation that should not have been opened.

7. The Attorney General Guidelines were not designed to give guidance on a major problem faced in the CISPES investigation: the extent to which leaders and members may be investigated during an investigation of a group to which they belong. Other aspects of the CISPES investigation were also not specifically addressed by the guidelines.

8. There is no evidence that the White House or anyone acting on behalf of the White House gave instructions, requested information, or otherwise attempted to influence the CISPES investigation. The same is true of all other government agencies and outside private groups. There is no evidence that the CISPES investigation was politically motivated or directed.

9. Varelli's initial case agent, who resigned from the FBI in 1984, gave Varelli classified documents and withheld money that was to have been paid to Varelli. Other than that, my inspectors have not identified any illegal acts or violations of constitutional rights committed by the FBI as part of the CISPES investigation. They did identify thirty-one instances of possible violations of the Attorney General Guidelines, mostly of a minor and technical nature. Since that time, the Bureau's Legal Counsel Division has opined that only fifteen of these instances were in fact violations, and that of those violations, thirteen warrant being reported to the President's Intelligence Oversight Board.

In a moment, I want to discuss what I plan on doing about what my inquiry discovered. Before I do so, I want, however, to put the CISPES investigation—and the Bureau's international terrorism program—into perspective. First and foremost, contrary to certain allegations, the CISPES investigation was not a return to the days of COINTELPRO. As initially conceived, the investigation was a reasonable examination of a possible terrorist threat. That its execution was flawed reflects mismanagement. It does not reflect a policy of purposeful interference with legitimate domestic political activity.

Terrorism joined white collar crime, organized crime, and foreign counterintelligence as the Bureau's fourth priority investigative area back in 1982. It has been and will continue to be the duty of the Federal Bureau of Investigation do to all within its power to deny support and refuge to international terrorists in the United States and to identify, neutralize, and help prosecute individuals engaged in support of international terrorism. We were directed to do so by Executive Order; we are governed in this task by the Attorney General's Guidelines; and Congress has demonstrated its own concern by giving us, under certain circumstances, extraterritorial jurisdiction for terrorist incidents in other countries. It should be kept in mind that the CISPES investigation arose close in time to three bombing incidents in Washington, D.C., one of which, in November 1983, took place in the Capitol itself. It came not long after a period in which there were sometimes over 100 terrorist incidents annually in this country and Puerto Rico and at a time when the subcommittee on Security and Terrorism of the Senate Judiciary Committee was urging the Bureau to investigate groups suspected of terrorist activity and expostulating when the Bureau did not.

The counterterrorism program designed by the FBI to respond to these realities has been highly successful. Despite the significant growth of terrorist acts abroad—often directed against Americans or American interests—there has not been one terrorist incident carried out in this country by a member of an international terrorist organization since 1983. Our approach has been to stop incidents before they happen, and our approach has worked. We have defused plots to bomb a crowded jetliner, to overthrow established governments, and to assassinate political leaders.

These were arduous accomplishments. They were the products of diligent investigation and intelligence gathering. A decade ago Congress recognized the need for intelligence gathering when, in passing the Foreign Intelligence Surveillance Act of 1978, it noted:

"While luckily the United States has heretofore been spared from the worst cases of international terrorism, a lack of intelligence concerning it may, as other countries crack down, present the United States as an inviting target."

The Bureau has acted accordingly and has acted effectively.

Does any of this excuse the mistakes that were made in the CISPES investigation? Of course not. The many successes of the Bureau's terrorism program do not justify what happened in the CISPES investigation.

But it is well to remember that when the information we have points toward even a remote possibility of terrorism on these shores, it is the Bureau's sworn duty to investigate the matter fully. In the overwhelming majority of cases, I believe that the Bureau's terrorism investigations have been conducted thoroughly and capably—properly focused, grounded on solid evidence, and concerned only with terrorism. After a thorough inquiry, I am convinced that the CISPES investigation was an aberration from this pattern—an unfortunate aligning of mistakes in judgment at several levels that cumulatively led to an investigation of which the FBI is not proud.

What matters now, of course, is not the past but the future. The CISPES investigation taught the Bureau and me a great many lessons, and I would like to share those lessons with you by describing for you now the changes that I have ordered be made in response to the inquiry.

I should first mention that the inquiry report presented to me by my inspectors made a number of recommendations for changes and corrective actions. After careful review, I concluded that it was necessary to go beyond what was recommended in this very thorough report. Therefore, I have both implemented the actions and changes recommended in the report, with modifications in some instances to broaden their effect, and have also implemented a number of my own policy and procedural changes.

First, a basic conclusion: the Attorney General Guidelines applicable to international terrorism investigations were primarily designed to give guidance in foreign counterintelligence investigations. The Guidelines do not contain sufficient guidance and sufficient specificity regarding international terrorism investigations of groups that are primarily composed of persons in the United States. For example, the guidelines do not describe the extent to which leaders and rank-and-file members may be investigated during an international terrorism investigation of the group to which they belong. Nor is there specific guidance regarding international terrorism investigations of fairly broadly-based groups like CISPES.

For that reason, I have asked the Attorney General to approve the formation of a Department of Justice/FBI Joint Working Group tasked with making recommendations to the Attorney General on modification of the guidelines to address specifically international terrorism investigations of groups. I have asked the Attorney General to appoint Mary Lawton to counsel the Attorney General for intelligence policy and review—with whom you are all familiar—to chair this particular group. My expectation is that this group will develop for the Attorney General additional guideline

provisions that will furnish the guidance necessary for these types of investigations.

It was also apparent that the review and approval processes for the CISPES investigation were insufficient and were carried out at too low a level, given the sensitivity of this type of investigation. I have instituted a number of changes to rectify this problem.

Principally, all international terrorism investigations will now have to be approved at a higher level. I have instructed that the approval level for international terrorism investigations of groups be at the section chief level at FBI headquarters. At the inception of the CISPES investigation, the approval level rested at a lower level with the operational supervisor. This is a significant elevation of an approval level and brings each of these cases to the attention of the individual responsible for the nationwide managements of this important investigative program.

In addition, I am requiring that the section chief review international terrorism investigations of groups every 6 months and that the Deputy Assistant Director having oversight of the terrorism program review each of these cases annually. Included in this review must now be specific assessments that previously were not required, which I believe was a flaw in the review process. For example, the reviews must now include an assessment of the investigative objective of each case and a determination of whether the investigation is consistent with and headed toward accomplishment of these objectives. The mission must be crystal clear and sharply focused.

As mentioned earlier, I concluded that the mechanism designed for review of international terrorism cases, particularly of groups—including review by the Department of Justice's Office of Intelligence Policy and Review—did not alert reviewing officials to the fact that particularly sensitive investigative activities were being undertaken and did not alert them to the full scope of an investigation. For example, in the CISPES investigation there were instances when activities that were essentially political in nature were surveilled. I have further refined the review and approval process to ensure that higher level officials are aware of such surveillances—and of other sensitive investigative activities—and to ensure that if these surveillances and activities do take place, they are fully justified.

By way of further example, as mentioned before, my inspectors concluded that the October, 1983, communication to all 59 field offices unnecessarily broadened the scope of the CISPES investigation and that it was ordered without sufficient prior review. Accordingly, I have instructed that clear and concise criteria be developed for judging the appropriateness of the scope of all international terrorism investigations and that the scope of such investigations be regularly reviewed.

I also concluded that during the CISPES investigation there was no requirement that higher level officials be advised when certain investigative activities—which by their very nature must be scrutinized closely—were being used. Such activities include surveillances at public rallies, attendance at meetings, and other similar, investigative techniques. Although I will discuss this topic in greater detail in a moment, I would like to mention that each time a

document is prepared seeking approval or review of these types of investigations, including domestic security investigations, I will now require inclusion of a description of the investigative activities that have been undertaken to date. If sensitive techniques are to be utilized—and often they must be utilized—higher-level officials will be able to determine, and will be required to determine, whether a particular investigation merits the use of such techniques.

I believe that these and other changes will allow high-level Bureau officials, as well as the Department of Justice, to assess and evaluate the focus, the basis, and the scope of these investigations. These and other changes will thereby help make certain that direction and guidance are proper and that any sensitive techniques being used is properly appropriate and justified.

During the CISPES investigation, there were instances when agents in the field offices asked headquarters for guidance on the applicability of the guidelines and on the wisdom of continuing certain aspects of the investigation. It is vital that these types of field inquiries come to the attention of high-level Bureau officials. For that reason I have instructed both of the FBI's investigative divisions to make certain that tracking and monitoring systems are in place to ensure that these requests—and particularly requests for guidance on justification, focus, and use of sensitive techniques—are brought to the attention of higher level Bureau officials. I have specifically instructed that Bureau communications forms be redesigned to make it easy to determine whether a response—for example, guidance—is required or whether a communication is merely for informational purposes. This will help make sure that headquarters provides timely high-level guidance when it is necessary to do so.

Probably the most critical area requiring attention was how to conduct investigation of groups where legitimate First Amendment activities were being undertaken by the rank-and-file members. I found that, in the CISPES investigations, guidance on dealing with activities protected by the First Amendment was given to the field offices in many instances. In spite of this, headquarters received reports on such activities that failed to specify why the reports were necessary.

What this tells me is that sufficient training in this area is not being provided to our personnel. For that reason, I have instructed that additional training on how to deal with activities protected by the First Amendment be given to all agents, nationwide. This will include training for new agents, training for managers, and training for agents working these types of cases. I want to do everything I can to remind personnel at all levels that investigations must not necessarily infringe on activities protected by the First Amendment.

Closely coupled with this will be the development of written guidance concerning activities protected by the First Amendment and development of written guidance concerning the collection and preservation of printed public source material. Further, I have instructed that the Bureau's Legal Counsel Division participate from now on in providing instructions in cases where the potential exists for confronting legitimate First Amendment activities in the course of the investigation. As I mentioned before, it is critical that senior

managers and the Department of Justice be fully aware of precisely which investigative activities have been undertaken in any particular investigation when they review and/or approve that particular investigation. The new requirement, mentioned a moment ago, that descriptions be included in every review and approval document will hasten the solution of this particular problem.

My inquiry concluded that a number of deficiencies in the handling and management of Frank Varelli resulted from a failure to investigate Varelli's background properly and resulted in undue reliance being placed on the information he provided. Consequently, I have done the following:

First, I have instructed that the Intelligence Division establish a unit dedicated to managing all foreign counterintelligence and international terrorism assets in a manner similar to the way in which criminal informants are now being managed. I have taken this action to make certain that our assets receive uniform and independent oversight, thereby vastly increasing the likelihood that deficiencies of the type revealed in the Varelli case will be detected by Headquarters and acted upon promptly.

Second, I have instructed that a number of additional procedural changes be instituted to ensure that undue reliance will not be placed on information provided by assets. For example, there were numerous instances where Varelli provided information to the FBI that, upon reexamination, was determined not to be firsthand information but was in fact public source information. Accordingly, I will now require that information received from assets and informants be set forth in a manner that will show, to the greatest extent possible, where the asset or informant obtained the information. Thus, if there is no indication in a document as to the original source of an asset's information, that information will now be judged accordingly.

Third, whenever the FBI begins development and utilization of an asset, I have instructed that his bona fides be systematically and thoroughly checked and that any information provided by the asset be systematically and thoroughly analyzed. This means that information about an asset and information from an asset will be subjected to uniform analysis before being characterized as reliable. The CISPES investigation saw undue reliance placed on information that had not been shown to be reliable and on characterization of an asset as being reliable when, in fact, that had not yet been established. My changes ought to help prevent this problem from happening again.

It also became clear to me that international terrorism investigations, because of their potential for impacting on civil and constitutional rights, warrant closer examination during the periodic reviews of field office operations by the Bureau's Inspection Division. Therefore, I have instructed the Bureau's Inspection Division to develop new audit procedures and to provide more in-depth review of the asset and informant programs, including review of such matters as the bona fides and reliability of assets and compliance with relevant rules, and regulations. I have also instructed that, during each field and headquarters inspection, all open international terrorism investigations of groups be reviewed not only for compliance with applicable guidelines, rules and regulations, but also to deter-

mine whether the scope and the focus of these investigations are appropriate and properly documented. As part of this process, there will be increased training and specialization for our inspectors and their staffs to ensure the adequacy of these reviews.

In addition to the need I mentioned earlier for significantly increased training in regard to First Amendment issues, it also became apparent to me that training in other areas must be enhanced. For example, during the CISPES investigation certain supervisors who were entrusted with responsibility for supervision of various aspects of the investigation clearly did not have sufficient familiarity with the terrorism program to ensure meaningful case supervision. For that reason, I have instructed that new field supervisors, and supervisors new to a particular program, receive a comprehensive briefing on all programs under their responsibility. This will include making certain that they are familiar with pertinent guidelines and reference material to help them deal with the types of issues presented by the the CISPES investigation.

In a related matter, to make sure that the FBI learns from and continues to benefit from the lessons learned in the CISPES case, I have instructed that the findings of my inquiry be brought to the attention of all senior managers in the FBI so that they understand what precipitated the need for the changes I have instituted. I intend to make certain that the deficiencies in the CISPES investigation and in the operation of Frank Varelli are included in relevant training programs and materials.

I have also instructed that numerous other policy changes be made and actions of a less significant nature be taken to assist our managers in the day-to-day operation of the Bureau. These changes range from increased examination of the indexing process to reexamination of the usefulness of the FBI file sometimes referred to as the "terrorist photograph album."

Finally, Mr. Chairman, after careful consideration, I have decided to impose disciplinary sanctions against 6 FBI employees at the supervisor, unit chief, and section chief levels for their performance during the CISPES investigation. Both field and Headquarters personnel are involved. In three of these cases, the individuals are being formally censured, a sanction of considerable gravity within the FBI. In the remaining three cases, each of those involved has been censured, placed on probation, and suspended from duty for 14 calendar days. A seventh employee, whose performance would in all likelihood have merited dismissal, of course, has resigned.

Let me make it very clear that I am disciplining these individuals solely because of the managerial or supervisory inadequacies displayed by them during the CISPES investigation. I have seen no evidence whatever that the conduct in question was either illegal or motivated by any improper purpose.

At the same time, the mistakes in judgment that took place during the CISPES investigation were serious ones, and I cannot emphasize too strongly my firm conviction that there is no place for such mistakes in the work of the FBI. The sanctions I am imposing are intended to convey that conviction with clarity and vigor.

In conclusion, I believe that these changes represent a significant improvement of FBI management procedures and policies, and I be-

lieve that these changes substantially increase the likelihood that future CISPES cases will not occur.

I will now be happy to try to answer any questions you may have on what my inquiry found and on what I have done. As you are aware, I cannot discuss classified information—and you have discussed that, Mr. Chairman—but I will of course be happy to answer for the classified record any questions you may have pertaining to such information.

Thank you, Mr. Chairman.

Chairman BOREN. Thank you very much, Director Sessions. I want to commend you again for the candor of the testimony that you've just given.

I think that what we have pictured here is an aberration, and I think you've put it into the proper context. The fact that we have not had a number of terrorist incidents in the United States over the past several years is a direct result of effective work by the FBI in heading these off in advance.

None of us want to see any weakening of resolve in that kind of activity. We realize that much fine work has been done by the Bureau.

Director SESSIONS. Thank you, sir.

At the same time, I think it is very important, when mistakes are made that may impinge upon the First Amendment Constitutional rights, that we be forever sensitive to any possibility that the rights of American citizens may have been violated or that American citizens may have been discouraged from exercising fully their own First Amendment rights.

Where any human beings or institutions are involved, we certainly expect that mistakes from time to time will be made. The problems that we have had in the highest levels of our government and in some of the most sensitive programs have occurred primarily because we have refused to openly admit the mistakes, then deal with those mistakes and put in place the changes that will prevent recurrence in the future.

I think that is the spirit with which you have approached this current situation. You've been candid where you have found deficiencies. You have not tried to gloss over mistakes; in fact, you've highlighted them. That is a tribute to you and to the Bureau personnel who have conducted this inquiry. You did not try to cover over mistakes, but to try to see what we can learn from them, and, especially, to see what changes we can make to make sure that we protect American citizens from any possible intrusion into their own liberties by their government in the future.

So I want to commend you for the spirit in which you have spoken today. I want to commend those that are associated with you in the Bureau for the vigor with which they have undertaken to find out the facts and to try to learn from the mistakes that have been made in the past.

We have here a very healthy example, of the right kind of operation of our government in terms of trying to sort out mistakes that have been made.

You've said that the investigation was overly broadened. There is no dispute about that. Can you give us any kind of rough estimate as to the number of district offices that ultimately became in-

volved—not initially, but ultimately—became involved during this period of over 2 years, and how many hours of time may have been spent by agents on the CISPES investigation?

Director SESSIONS. As you know, in October of 1983, the communication went out from FBI headquarters which went to all field offices. Therefore, all field offices were notified.

Chairman BOREN. How many field offices are there?

Director SESSIONS. There were then 59. There are now 58. But the actual involvement of those field offices was of course—varied greatly depending on their particular—the particular location of chapters in their particular areas. But it was that particular circumstance that broadened it greatly.

As to the estimate on the number of hours that was utilized, I can only give you that roughly, Mr. Chairman, because those records no longer exist. It was the, I believe, the estimate of Mr. Toohey, who is sitting here with me, that there were approximately 10 agent work years put in the entire CISPES investigation over the period of time.

Chairman BOREN. Ten agent work years?

Director SESSIONS. Yes. That would mean 10 agents working full time for a period of a year.

So that that was the general estimate, and Mr. Toohey is here, and he can correct me if I'm in error in that regard. It is an estimate only.

You know that when we estimate the cost, it is approximately in that area. The cost of the investigation matched nearly the cost of the investigation itself. And that is around the $800,000 level.

Chairman BOREN. Now you have been critical in your report of the fact that there was not a thorough enough investigation into Mr. Varelli's background and as to his credibility. The whole investigation really commenced as a result of information given by Mr. Varelli so it was flawed from the beginning. The information did not have sufficient credibility and should have been checked out more thoroughly from the beginning. The inspection report indicates that many of the allegations made by Mr. Varelli, some of them quite fantastic really came from articles in a right wing Mexican magazine. There were, for instance, allegations like the claim that Mr. Duarte was trying to start a terrorist group or that the Foreign Minister or a former U.S. Ambassador were involved in terrorist groups. All these accusations found their way into cables to the FBI headquarters in various field offices. And yet we know they really were second hand reports taken from these right wing publications in Mexico, I think, principally written by Roberto D'Aubussion.

Why were none of Varelli's statements checked out with agencies who were more familiar with the Salvadoran affairs such as the State Department or the CIA? And, in the future, with the new unit that you have established to review the credibility of assets involved now in the terrorist activities, would that kind of review take place?

Director SESSIONS. As to the reason why it did not, it should have taken place in some form. The source of those materials should have been very clearly checked out and I, as you can tell from the

procedures I've set, it will now be known where that source is. So that will not happen.

As to the sharing or seeking of information from other agencies, other intelligence agencies, I believe that is also essential and I believe that the provisions that were in place even when the CISPES investigation was continuing should have facilitated that but I have now taken steps to ensure that it will.

Chairman BOREN. So that if things that are really quite fantastic in terms of the nature of the accusation such as some of those in this instance which obviously have absolutely no credibility—they would be checked out with State Department, with CIA and others that would be familiar with the political landscape in those countries?

Director SESSIONS. Well, it should be checked out even at the supervising agent level. The person who is actually handling that person should have seen those things and should have acted upon them.

Chairman BOREN. Another example I noted was in the original investigation of CISPES back in 1981 which was opened in part on a purported Salvadoran document. There was a report of a Farid Handal, a Salvadoran leftist, on a 1980 trip to the United States in which he met with Communists and others. And according to the report, the FBI learned about this trip report from the Review of the News, a John Birch Society publication, and received documents from a House Committee staffer and from the Justice Department.

Is it true that the FBI never verified the origin of this Farid Handal trip report by determining that this was, in fact, an actual document, or was this just accepted as a report from this publication?

Director SESSIONS. It was only yesterday, Senator Boren, that I came to know that that had actually come from a John Birch Society publication. I had always heard it referred to as a report of the news. The document, so far as I know, was never verified. There was, in fact, a translation provided. And of course you will recall that the investigation, the original Foreign Agent Registration Act investigation begun in 1981, was required and requested by the Department of Justice.

Chairman BOREN. But, according to the explanation of the guidelines that you've established, you would now have it brought to your attention when the source is a publication or when it is some secondary source. And then the information or alleged in that secondary source would be subject to scrutiny and to verification by other means.

Director SESSIONS. Absolutely. But I will say this, that the FARA investigation would have been opened at the request of the Department of Justice. I mean we would have opened the investigation at the request of the Department of Justice whether that had been verified or not.

Now, Mr. Toohey may be able to correct me in that regard. But I believe that I am correct there, sir.

Chairman BOREN. Mr. Toohey has indicated that that is correct.

The Inspection Division, as you have indicated, accepted the predicate for the CISPES investigation. But you've indicated that it

should have been closed much earlier. In June of 1984, the FBI knew that CISPES was no longer a suspect in the Washington bombings and that Varelli had been compromised or was of questionable reliability.

Obviously, the investigation continued, even though CISPES had been eliminated as a suspect in the bombing and Varelli had been compromised. Whose responsibility was it, under the administrative system at that time, to make such an evaluation that it should have been stopped?

Director SESSIONS. Well, it was in fact closed eventually by a supervisory special agent. It could have been actually discovered at that time, but there were still facets, Mr. Chairman, that existed that, separate and apart from facts known, might have prompted a continuation.

There were other informants. There was still the suggestion that there would be disruptions at a national convention. But you are correct. Those things should have flagged and should have triggered procedures that would have sounded the possibility of closing an investigation at that point.

Chairman BOREN. At what level, under the existing policy at that time, should that have been triggered?

Director SESSIONS. That would have been done by a supervisory special agent, I believe, at the desk level in the Bureau headquarters.

Chairman BOREN. Bureau headquarters.

Director SESSIONS. That would be below the unit chief level.

Chairman BOREN. Below the unit chief level.

Director SESSIONS. I think that is correct, sir.

Chairman BOREN. Under the changes which you have now implemented as a result of this experience, at what level now would that decision be made?

Director SESSIONS. There will be two things that will happen. In connection with groups, there will be of course the section chief level, which is considerably higher. In connection with individual investigations, it will be at the unit chief level. And I believe I am correct in that regard.

Chairman BOREN. So it will be elevated up to the unit chief level?

Director SESSIONS. Yes, sir.

Chairman BOREN. And, therefore, hopefully more sensitivity would be shown, and a more careful review would be made with access to fuller information?

Director SESSIONS. Well, we will be more certain that in fact that review is carefully made and a judgment arrived at.

Chairman BOREN. Let me ask one question I feel obligated to ask you because I am sure many of my colleagues and others will wonder about the same point. On what basis did you decide to limit personnel actions in this matter? It appears that none of the officials who have been disciplined held positions above the mid-lower level positions within the Bureau.

Director SESSIONS. This was an extremely difficult problem for me. I'll tell you why. It arose, not out of any uncertainty about the importance of bolstering the work of the special agents and the people who supervise and to preclude any further negligent con-

duct in the carrying out of their sworn responsibilities. And yet, at the same time, it is important to analyze and to establish in my own mind how high it should go.

And when I did that, I wanted to be certain that the appropriate chain of command responsibilities were considered. And I tried to do that. And I hope I did it very carefully.

The problem that struck me is probably the same one that strikes you. And that is, in my responsibility as the Director I need to be certain that I have information and that it flows to me. And yet, at the same time, when procedures are established, if it does not flow through me, should I then be responsible for what has taken place?

If that's a correct analysis and a correct approach, then I have to be sure that the people who were in fact supervising were expected to know or had a way to know. And so when I went about it, I found that the negligent conduct, which is what I have dealt with, went to the level that I have in fact dealt with in terms of punishment.

So that I am satisfied that it should not have gone any higher. That under the procedures that were actually in place at the time, that those people had no reasonable way to know. And I've, of course, looked at that particularly carefully in connection with the Director himself and with the Assistant Director who was in charge of the Criminal Investigative Division at the time, who was Mr. Revell.

Chairman BOREN. Having changed the procedures now, in essence, to make sure that any kind of what you've called the negative conduct, improper or intrustive behavior, the information, would go higher up the chain of command. Were there to be misconduct in the future—and we hope that this system will prevent that from happening—I would gather that you would expect that the new procedures you have established would result in information of necessity moving higher up the chain of command. That is your desire, to make sure that it does move to higher levels for resolution and for policy guidance in very sensitive cases. Perhaps in the future higher level personnel at the Bureau would be held accountable for failure to manage programs of this kind?

Director SESSIONS. I would think so.

Chairman BOREN. Thank you very much. Senator Cohen?

Senator COHEN. Thank you, Mr. Chairman.

I'd like to join you in commending Director Sessions for the very candid and tough-minded and fair-handed way in which he has handled this and for taking corrective action.

I'd like to pursue Mr. Varelli a bit. You've mentioned he is an FBI—he was an FBI asset or source. Now how does one become an FBI asset or source?

Director SESSIONS. I don't know precisely how Mr. Varelli was acquired. But Mr. Toohey is here and could explain for us how that happened in that circumstance.

It's my belief that they come from a number of different ways. That is, by contacts with—by special agents out in the field who become aware of particular people who have a particular capability to get particular information.

But as to particulars on him, I do not know, sir.

Senator COHEN. I would assume it is more than simply a walk-in situation where someone comes in and says I'm from El Salvador and I have some important information. There may be some terrorist activities taking place in the United States supported by groups who are organized within the United States.

I would assume the first thing you would want to do would be to check out the allegations and the person making them. And yet I——

Director SESSIONS. Absolutely.

Senator COHEN. I look back at the Varelli situation, and from what I can see, the Dallas field office ignored the discrepancy in the story on why he left El Salvador as well as the derogatory information about one of his relatives. They also failed to check out his fingerprints and his U.S. Army record, or check with any of the authorities in several places where he had worked and gone to school.

How could it have occurred that all of these checks or red flags never seemed to surface?

Director SESSIONS. Negligence.

Senator COHEN. He was also an ordained minister who listed himself as a member of the Moral Majority Publishers Committee while he was on the FBI rolls as an informant. Was this contrary to FBI policy of using clergy as informants?

Director SESSIONS. No, it was not. But it would have to go to a higher level for consideration. It can be done. But it requires a higher level of approval to use that kind of informant.

Senator COHEN. So it did not violate FBI policy at that time?

Director SESSIONS. I don't believe that it did. Mr. Toohey may be able to tell us that it did. But I don't believe that it did, sir.

Mr. TOOHEY. He was not a practicing ordained minister at the time. The rules require that he be approved at a higher level at FBI Headquarters. Essentially the purpose for that approval at a higher level is to ensure that proper instructions are given to the field that an individual who receives privileged information as one would who is a minister would not in fact—the FBI would not accept that type of information and would be aware not to deal in that type of thing.

Senator COHEN. After being so candid, Mr. Toohey, the Chairman has indicated that you should be sworn.

Chairman BOREN. Mr. Toohey, this indicates no lack of confidence in the fact that you just answered with complete candor. But in keeping with our rules, do you swear that the testimony that you have just given and the testimony that you will give in this matter is the truth and nothing but the truth?

Mr. TOOHEY. Yes sir.

Chairman BOREN. Thank you very much.

Senator COHEN. Director Sessions, if I could come back to Mr. Varelli?

On page 7 of your statement you indicate that quote, "Absent the information provided by Frank Varelli, there would not have been sufficient predication for an international terrorism investigation of CISPES." And then you go on to say that such information, I'm quoting, "Was not adequately verified by the FBI."

And then on page 8 you indicate that the initial focus of the CISPES investigation was, quote, "Proper, given the information available to the Bureau at the commencement of the investigation."

I would appreciate it if you would clarify that for me. Because if the information that Varelli had provided had not been adequately verified, then how could the original focus of the investigation have been, quote, "proper"?

Director SESSIONS. It should not have been. It should have been verified. If it had been verified, it would have been found to have been lacking, and therefore it would not have been adequate, and there would not have been an adequate predicate for the opening of the investigation.

But as to the—out of the hindsight, we know now that Mr. Varelli's background was not checked, he was not properly and thoroughly reviewed, and there was just negligence all along the line with the connection with acquiring information and failure to check it out.

Senator COHEN. So the focus was not proper in that sense because the allegations and the person making the allegations, were not significantly checked out for his bona fides?

Director SESSIONS. I think you are correct, yes, sir.

Senator COHEN. I would like to talk a moment about so-called spin-offs. On page 4, you indicated that the broadening of the investigation included 180 CISPES chapters nationwide, and numerous other investigations arising out of the CISPES investigation, sometimes referred to as spin-offs, were conducted. How many such investigations are we talking about? How many individual groups?

Director SESSIONS. I believe there were 178, and Mr. Toohey verifies that for me.

Senator COHEN. 178 groups?

Director SESSIONS. 178 different spin-off investigations.

Senator COHEN. And how many separate groups did that entail, and how many individuals *in toto?*

Director SESSIONS. Mr. Toohey reminds me that was 9 groups of that 178.

Senator COHEN. And how many individuals would that have entailed?

Director SESSIONS. That was the balance of them.

Senator COHEN. Individual people?

Director SESSIONS. The balance of them would have been individuals, that's correct.

Senator COHEN. Now do the spin-off investigations have to meet the——

Director SESSIONS. Pardon me. I was checking to see if that was correct, and he says that it is. I did not know whether there might be other groups, but it was not.

Senator COHEN. All right. Do the spin-off investigations have to meet the same criteria as the original investigative predicate?

Director SESSIONS. I'm not certain about that. I think in some part yes, but I am certain I will ask Mr. Toohey to verify that for you, sir.

Mr. TOOHEY. Yes, sir, the same criteria for a opening of a case on an individual as on a group.

Senator COHEN. So whenever another group or individuals come in contact with a group under investigation, those individuals would have to fall within the same focus of association with a suspected terrorist group in order to come within the scope of the investigation?

Mr. TOOHEY. We are getting very close to that which is protected in open session. Generally, the same rules apply to the opening of cases on individuals as groups.

Senator COHEN. Well, were these investigations opened because the individuals were shown to be involved in activities that were the basis for the original investigation?

Mr. TOOHEY. Yes, sir. "Shown" perhaps is too strong. "Suspected of" would be more appropriate.

Senator COHEN. All right. Could I ask, again coming back to Varelli, he is a bit troubling to me. As I understand it, he was in a position to have acquired some classified information from the FBI office in Dallas. Is that not correct?

Director SESSIONS. He did in fact acquire reports; that's correct.

Senator COHEN. Did your investigation of the Inspector's report indicate how he happened to acquire that information, whether that information was passed on to the Salvador National Guard, and whether or not any information was compromised? In other words, was security compromised by his role in serving as a conduit apparently bringing information in from El Salvador and then serving to pass information back from the FBI files to the Salvadoran National Guard?

Director SESSIONS. It is my belief that he acquired those reports through the agent who was supervising him. I do not know whether he communicated that information from those reports to the Salvador National Guard or not. He had the information apparently, so it's logical that he could have. But that would be merely speculative. So I simply do not know the answer to the question that you propose about how far it went, because I could not tell you. Mr. Toohey may recall information from his investigation that you can add to that, but that is my recall, sir.

Senator COHEN. Has there been a damage assessment in terms of the information he had access to and passed on to the Salvador National Guard?

Director SESSIONS. There has been no damage assessment, but that will now be conducted.

Senator COHEN. You intend to carry that out?

Director SESSIONS. Yes, sir.

Senator COHEN. Now, I think you indicated, Director Sessions, that you believe the scope of the investigation became unnecessarily broad. Now the question I have, I guess it was in October 1983, the FBI headquarters issued the directive to cover all CISPES chapters. Was this a decision within the discretion of the case supervisor at FBI headquarters to make on his own initiative?

Director SESSIONS. Yes, it was.

Senator COHEN. So we are not talking about a violation of FBI policy but rather an error in judgment?

Director SESSIONS. I think that's correct.

Senator COHEN. That individuals who were brought within the scope of the investigation, their names remain in FBI files, do they not?

Director SESSIONS. That is correct.

Senator COHEN. What should be the policy, Director Sessions, given what we know now about the lack of reliability, veracity, accuracy of Mr. Varelli in the first instance which led to the initial investigation and the broadening unnecessarily of that investigation? I have described it in the past as sort of like an ink drop going on a blotter and just spreading out into concentric circles, sweeping in a variety of innocent people who were simply exercising their constitutionally-protected freedoms. Suddenly their names end up in FBI files. Why should that be, or what should be done about the names in that file, because certainly I assume it might have some implication? Many of those individuals might come up for some sort of appointment, perhaps to a federal office, and a name check goes out, and up pops a computer analysis, and suddenly they are on the network. What should be the policy in this situation where the allegations concerning a group, or individuals within that group, end up in FBI files?

Director SESSIONS. That is an extremely important circumstance, and I have required that we take and develop guidelines for the utilization of those names and the release of those names that are in the indices. There are also, as you, know a number of those names that are not in the indices of the Bureau but are in the indices of the file itself. That is, names that Mr. Toohey in fact now had on internal indices. That is to be pursued very carefully and to develop guidelines that will relate to the release of that information. So we are sure that what you—or we are as sure as we can be that very careful attention is given to the release of a particular name under a particular circumstance.

Senator COHEN. Why shouldn't their names simply be expunged?

Director SESSIONS. I don't know that I should rewrite history. I know that those are in the indices of the investigation itself that is, of Mr. Toohey's investigation of CISPES. Those names were not otherwise in the indices. There are a number of names that are in the Bureau's indices, and Mr. Toohey can tell you that number. But that is a much, much smaller number that is related anyway to the investigation that Mr. Toohey conducted.

Senator COHEN. I'm not even concerned about the number. I am concerned about the propriety of allowing someone's name to go into the FBI's files, which may or may not come out at some future time, which has no basis in fact for being in the FBI files other than simply exercising one's constitutional rights, maybe simply going to church, maybe listening to a speaker at a public forum, and suddenly ending up in some form or fashion in FBI files. It seems to me that that is inconsistent with the best interests of this country, and I will seriously recommend that an evaluation being undertaken as to why those names shouldn't be expunged from the record.

Director SESSIONS. I quite agree with you "a name in the circumstances that you just described should not be released, and I am confident that when I review what the group comes up with, that we will find that those kind of strictures that you suggest would be

applied to those appropriate circumstances, just as you have suggested here."

Senator COHEN. Just one final point.

Senator METZENBAUM. Excuse me, Senator Cohen, I just want to clarify something. You asked him about expunging the names from the list. He answered about not releasing the names to the public.

Director SESSIONS. That's correct.

Senator METZENBAUM. But I did not hear him answer whether or not there will be any effort to expunge those names from the list that don't belong there.

Director SESSIONS. I am concerned, Senator, about whether they can properly and should properly be expunged. I will be happy to review that specific question further. But what I am concerned with directly is the release of the name. And if in fact, as Senator Cohen suggests, there is a name in that file of a person who was attending a church service or doing something of that nature, obviously, to me that name should not be released as having been associated with the CISPES investigation.

Senator COHEN. But to me the name shouldn't be in the file, period.

Director SESSIONS. It may be that it should not be in the file at all. But it is there. The question is how to deal with it. We have not, as you well know, under the guidelines destroyed information except in connection with the way it should properly be destroyed. They would normally be maintained for a 50-year period. The question is, I believe, extremely important, is how to deal with that, and the names, and the particular levels, and the particular circumstances in which those people were involved. And I will try to carefully look at it and I don't have any reason not to share it with you. And I will be pleased to do that with the Oversight Committee so that you will be fully aware of what we have done.

Senator COHEN. It just strikes me as being somewhat ironic that we have traffic violations in which you accumulate certain points for violating traffic codes. After a period of time, they wipe the names off the record altogether. And here we are talking about someone's name going into the FBI's files for doing nothing more than exercising constitutionally-protected freedoms, and yet having the name remain there. I really would recommend that you pursue the question of eliminating, expunging those names.

Director SESSIONS. I will pursue it.

Senator METZENBAUM. I would like to join in that request, Senator.

Senator COHEN. If I could make one final point and then yield. When the Justice Department made its review, conducted this review on an unrelated case—I'm not talking about CISPES now—they gave a directive to the FBI to discontinue the investigation; the predicate wasn't there. Yet the case went on some 15 months. How should the relationship work? On the one hand, the Justice Department can't be sitting on top of the FBI, micromanaging everything that the FBI is doing. On the other hand, the FBI seems to have deferred to the Justice Department to tell them whether they have jurisdiction to continue this type of investigation. And there seems to be a mismatch there. Who has the principal responsibility for the conduct of an investigation: the FBI supervising

itself, turning to the Justice Department only as a last resort; or should there be more oversight on the part of the Justice Department? And how do you account for the fact that after the Justice Department said discontinue or you have no basis for this, that something could go on for fifteen months?

Director SESSIONS. The Office of Policy and Review in the Department of Justice is the unit that is charged with that review. I have no question about their need to be able to rely that when they say closes a case, that the FBI closes the case, and they should be able to rely upon that. That 15-month circumstance was another aberration and it's been dealt with. I would say that if they feel the need to check, they should do that. I would hope that it does not happen again. But again, we try to supervise carefully. We try to be sure, and you are familiar with the circumstances in that case. If they want to check with us, I find no reason they should not do that as to see whether it was closed or not.

Senator COHEN. Thank you very much, Director Sessions.

Director SESSIONS. Thank you very much, Senator.

Chairman BOREN. Thank you very much, Senator Cohen.

Let me just ask Judge Sessions that you do report back to the committee. I realize that the policy question that has been raised today about expunging names from the files is an important one for you to consider, including under what procedures that should be accomplished. But I also share the concerns that have been voiced by Senator Cohen and Senator Metzenbaum, and I think other members of the committee would also share that concern. If we have a procedure, indeed, where the slate can be wiped clean on those who have actually been involved in wrongdoing, then certainly we should find a way to wipe the slate clean where names of people, who have not been involved in any wrongdoing at all, have improperly ended up in files.

Director SESSIONS. There are many, many names. And I shall be glad to share that with you. I presume my name is spread all over the Bureau's indices in some fashion, and I have not been involved in wrongdoing that I know of, and I presume its there. Those are records and those are indices, and when information comes to us, sometimes they are not put in the indices if they are not relevant or not material to an investigation, but are in files. And I will discuss it with you and will——

Chairman BOREN. But this is a case where, for example, you have conducted an internal inquiry and found that a specific investigation should not have been conducted as it was, and that those names should not have ended up in the files as targets of an investigation. That is a different situation than purely sort of informational kinds of files that are in no way derogatory. Because when someone's name ends up in a file as the target of an investigation, I think that carries a pejorative implication. So I will urge you to think about it. I realize this is an important policy question, and I would appreciate if you could report back to the committee in an appropriate way after due deliberation on this matter.

Director SESSIONS. I'll do that, Mr. Chairman.

Chairman BOREN. I realize that is is something that deserves a great deal of thought.

Director SESSIONS. Thank you, sir. I'll do that.

Chairman BOREN. I will say to my colleagues that we are obviously not operating on a 5-minute rule. We have been trying to operate on a 10-minute rule today.

Senator COHEN. Except for the Chair.

Chairman BOREN. We will do that as much as we possibly can. Senator Specter.

Senator SPECTER. I wouldn't say that it was limited to the Chair.

Chairman BOREN. I appreciate that bipartisan observation by the Senator from Pennsylvania.

Senator SPECTER. I was about to suggest privately but, since it came up publicly, I think it might be useful if we went to a 5-minute rule or a 10-minute or a 15-minute rule or a 20-minute rule. [General laughter.]

Senator COHEN. I think 5 would be appropriate.

Senator SPECTER. Or some rule. I am prepared to accept whatever in my case is applicable generally.

Senator METZENBAUM. Has the Senator from Pennsylvania's time expired? [General laughter.]

Senator SPECTER. I didn't hear that, Senator Metzenbaum.

Chairman BOREN. As usual, I have lost control. I never have it in this committee. But why don't we try to do 10-minute rounds and then we will come back.

Senator Specter.

Senator SPECTER. Judge Sessions, you described the supervisory activity in the supplement to your opening statement. But I think it would be useful if you would elaborate as to just what this means. You talk about sanctions against 6 FBI employees at the supervisor, unit chief, and section chief levels for their performance during the investigation. Start at the bottom. Just what does this mean? You have investigators in the field, then the supervisor comes in the field. Where does the unit chief come in, and where does the section chief come in?

Director SESSIONS. There was, in the field of course, a special agent who was managing Mr. Varelli. He was the special agent who was dealing with that particular asset. He does there—in the field—report to a supervisor. And a supervisor there then reports either to an assistant special agent in charge or to a special agent in charge.

At headquarters, there are headquarters supervisors. Above them are unit chiefs. Above them are assistant section chiefs. Above them then are section chiefs. Above that is a Deputy Assistant Director and then an Assistant Director.

Senator SPECTER. Was the agent himself disciplined in this case?

Director SESSIONS. The agent himself resigned back in 1984, I believe.

Senator SPECTER. And how about the special agent in charge? Who was the agent's immediate supervisor?

Chairman BOREN. We are under guidelines where——

Senator SPECTER. I am not asking for his name. I am asking for his title, consistent with what you have classified in the statement that you presented.

Director SESSIONS. Well, there was a supervisor of the agent who was dealing with the asset, Mr. Varelli.

Senator SPECTER. And was that supervisor disciplined?

Director SESSIONS. Yes, that supervisor was disciplined.

Senator SPECTER. And who was immediately ahead of that supervisor, the special agent in charge?

Director SESSIONS. Immediately above him was an Assistant Special Agent in charge.

Senator SPECTER. Was he disciplined?

Director SESSIONS. He was disciplined, that's correct.

Senator SPECTER. Immediately above the Assistant Special Agent in charge?

Director SESSIONS. Was the special agent in charge. And neither one of them during either one of the time frames were disciplined.

Senator SPECTER. Why not?

Director SESSIONS. Because it was not something that was brought to their attention nor necessarily should have been brought to their attention during the course of the investigation.

Senator SPECTER. Well, when you say a unit chief in your prepared statement and a section chief, are those positions in the Washington office?

Director SESSIONS. Those are in the Washington headquarters, that's correct.

Senator SPECTER. And were they disciplined?

Director SESSIONS. In some parts, yes. There were two headquarters supervisors who were disciplined. There was one unit chief who was disciplined. There was one section chief who was disciplined.

Senator SPECTER. All in Washington?

Director SESSIONS. There were 4 people in Washington who were disciplined, and there were 2 in the field who were disciplined.

Senator SPECTER. Well, was it calculated that those in Washington should have known about what was going on here?

Director SESSIONS. Yes.

Senator SPECTER. Well, why was that judgment made that the special agent in charge shouldn't have known?

Director SESSIONS. It just would not normally flow through him and did not flow through him.

Senator SPECTER. But the officials in Washington should have known, you finally concluded?

Director SESSIONS. Well, there is no question about that. They were dealing directly with the operational desk. They were directly dealing with the supervisors, with the unit chiefs and with the section chiefs, and there is no question in my mind at all.

Senator SPECTER. Judge Sessions, when we had our earlier hearing back on February 23——

Director SESSIONS. Yes, sir.

Senator SPECTER. At page 20 I made a reference to a letterhead memorandum—and I have sent for it, we don't have it available today—but in the record of the February hearing it is described in some detail. I had made a comment that the memorandum in the file in 1984 to the Director from the Denver office raising this question. Denver concurs with New Orleans that in spite of the attempts by the Bureau to clarify guidelines and goals for this investigation, the field is still not sure of how much seemingly legitimate political activity can be monitored. And then I go on to say here, with such a memorandum going to the Director, the question

then arises, what did the Director do? How far up the line was it reviewed by those in the FBI who would have had a greater understanding of the legal procedures and the sensitivity of these First Amendment issues? My question is, with this letterhead memorandum being sent to the Director, why isn't the Director responsible for these oversights?

Director SESSIONS. It went probably not any higher than the section chief level. In the particular memorandum that you have or the reference to it, you will see the sign-off by the persons who have actually seen it, and it was unlikely that it would go beyond the section chief level. Now, Mr. Toohey is here, and he may be able to explain with particularity in connection with that particular correspondence.

Senator SPECTER. I would like to hear that with Mr. Toohey's presence.

Mr. TOOHEY. I don't have that particular document before me, Senator, so I am relying on my recollection. As Director Sessions has said, I am certain it did not go above the section chief level. It may not have gone that high. Just because the letterhead memorandum indicates that it is to the Director, it does not indicate that it would necessarily reach his level.

Senator SPECTER. And so your determination was made that whoever got the memorandum, that person was chargeable with responsibility.

Director SESSIONS. Well, and I think so, and——

Senator SPECTER. And you made that determination from initials being placed on that particular document?

Director SESSIONS. I made the determination without even seeing the initials, Senator. It is clear that the information came to him and that there was no response, no timely response and guidance that was made to New Orleans and therefore probably to Denver as well.

Senator SPECTER. Well, did you make a determination that there was no other initial on the document which would have shown somebody else's specific knowledge of the matter?

Director SESSIONS. I do not recall there being any additional information about initials, but I will defer to Mr. Toohey. He may know, sir.

Senator SPECTER. How about that, Mr. Toohey?

Mr. TOOHEY. Senator, during the administrative inquiry, all pertinent documents that would reflect on the administration of this case, this one being included, were examined for all the initials that were on there. I can't specifically relate to you at this time whose initials were on this particular document, but I am certain in my mind that it did not rise to the level of the former Director. And each one of those documents—there were a number of them—were scrutinized.

Senator SPECTER. To the Director or somebody higher than those who were disciplined.

Would you take a specific look at the document——

Mr. TOOHEY. Yes, sir.

Senator SPECTER [continuing]. And report back to the committee as to specifically whose initials are there, and assure us that wher-

ever initials are present to indicate some knowledge or opportunity for knowledge, that that person was considered?

Mr. TOOHEY. Yes, sir.

Director SESSIONS. I will be pleased to do that.

Senator SPECTER. You have outlined, Judge Sessions, the changes in procedures which have been undertaken here. If this were to be repeated with the same oversight, would the responsibility go as high as the Director?

Director SESSIONS. No.

Senator SPECTER. How high would it go?

Director SESSIONS. It would go to the assistant director in charge of the Criminal Investigative Division.

Senator SPECTER. And how many levels below you is that, 2 levels below you?

Director SESSIONS. There are executive assistant directors, and then there are assistant directors.

Senator SPECTER. So it would be the second level below you?

Director SESSIONS. It would go that high.

Senator SPECTOR. So that if this is repeated, it would reach somebody 2 levels below the Director?

Director SESSIONS. The reason I say that is I have elevated a number of responsibilities up as high as the section chief level and above the section chief there are deputy assistant directors and then there are assistant directors. But I think that it would reach and could reach that high, sir.

Senator SPECTER. Have you given consideration to affixing responsibility in a case which involves First Amendment rights where you have had the experience, this bad experience, to go as high as the Director himself?

Director SESSIONS. I would hope that if there are circumstances that involve circumstances like CISPES, that the Director will be aware of it, sir.

Senator SPECTER. Well, then, that raises the question as to whether the Director ought to be responsible?

Director SESSIONS. I think the Director ultimately has to be responsible as I am here for what happened then.

Senator SPECTER. Well, I know that is so, but the issue is how far the disciplinary action goes. You have specified it. I don't really have too clear a picture of it, and it is pretty hard to trace the chain of command. But the essential question which occurs to me, given the experience in this matter, First Amendment right and gross oversight, as you have testified, is to whether the system ought not to be reconstructed to lodge responsibility in the Director himself so that if there is a recurrence, here the discipline would go not to subordinates, not even to assistant chiefs or not even to the deputy director, but the Director himself.

Director SESSIONS. My view of it, Senator, is that we need to be sure that the system functions and that not everything comes up to the highest possible level. If it is properly managed, properly organized, properly reviewed, and there is no negligence or failure to perform, then I think that the systems are in place. And I think they were in place then. If those people in those positions whom I have disciplined had properly performed and not been negligent in what they did, CISPES would not have happened.

Senator SPECTER. Well, Judge Sessions, I agree with that, but then the question arises, had the systems been functioning before, it wouldn't have happened, and the issue is how high a level do you want to place the responsibility at. The Director is a former Federal judge, a man whom we know personally, confirmed by the Senate, lots of confidence, and it would seem to me that where First Amendment rights are involved and you've had this experience, that the responsibility ought to be lodged there, that the system ought to go to the Director himself.

Now, I am not in a position to judge that with finality because I do not have a detailed knowledge of your workload or how many of these investigations there are. How many of these investigations are there which are as widespread as CISPES, which involve political interests on a major matter like El Salvador? Are there a great many? Is it just functionally impossible for the Director to handle that?

Director SESSIONS. No, it is not functionally impossible for the Director to handle it. And there is, in fact, a listing received every month, the exact number of the investigations there are under way, and you can get that information, and you would have it. It is contained in the report that comes to you on a yearly basis.

Senator SPECTER. I don't want to cut you off, Judge Sessions——

Director SESSIONS. You haven't cut me off.

Senator SPECTER [continuing]. But I have just had a note that my 10 minutes expired.

I would like this to be made an exhibit. [General laughter.]

Director SESSIONS. Senator, I will be sure that those are brought to your attention, but you do have those listings, sir.

Senator SPECTER. Thank you very much.

Chairman BOREN. Thank you very much, Senator Specter.

Senator Metzenbaum.

Senator METZENBAUM. Judge Sessions, let me first say I commend you for promising procedures to see to it that sufficient training in the area of First Amendment rights will be provided to your personnel. Having said that, I must say that I am astounded that that has not been done over the years, and it just sort of flabbergasts me that only at this point in the FBI's history are they getting into the whole question of First Amendment rights.

Director SESSIONS. We are looking at enhancements, Senator, and I will be glad to provide you with the curriculum from the FBI Academy that presently takes place and show you what changes are taking place in the curriculum to ensure that. And my legal counsel is here this morning, and I will assure you that you will have that information available for you, sir.

Senator METZENBAUM. I would appreciate obtaining that.

Director SESSIONS. I think it will be of great interest to you.

Senator METZENBAUM. Thank you.

Director SESSIONS. Thank you, sir.

Senator METZENBAUM. Now, I am concerned about what you are doing about those field offices in which there were several improper actions. One such office, as you and I discussed earlier, was Cincinnati, Ohio. Let me note 4 cases in that office involving the CISPES matter. First, on one occasion they obtained information about a telephone call without proper authorization. Second, on an-

other occasion, they used an investigative technique involving trash without proper authorization.

The third case was especially troubling. The FBI learned, quote, "from an asset that a professor at Xavier University placed a question on a final examination in a class which elicited the opinion of students concerning U.S. policy in Central America," end of quote. The professor, quote, "also allowed an unknown subject to speak in the class and hand out pamphlets concerning the Cincinnati Central America task force. A pamphlet identified this organization as an affiliate of CISPES," end of quote. As a result of this information, perhaps from an unhappy student, the FBI investigated that professor for 5 months without even knowing whether he was a CISPES member. They also investigated the outside speaker.

Now, I don't need to belabor the threat to academic freedom and civil liberties that this sort of investigation poses. The FBI's own report concluded that there was no justification for the investigation of the professor. I trust that you share my concern, Mr. Director, and I hope that you will act on that concern.

Director SESSIONS. I do.

Senator METZENBAUM. Now the fourth case, which is better known, also related to Xavier University. And this is where it gets rather sticky. It concerns Professor Paul Knitter, who was not the target of a formal investigation, but who did show up in FBI files. When Professor Knitter criticized the FBI for coming onto campus and asking questions about him, the FBI Cincinnati office replied, quote, "FBI agents have never solicited information about Professor Knitter." As a matter of fact I have the release here. It says "SAC Dinan further advised FBI agents have never solicited information about Professor Knitter." At the end of the release, Mr. Dinan repeated that Professor Knitter has never been the target of such investigation. The release also says, "Mr. Dinan said that equally mistaken are reports that the Cincinnati FBI has quote, probed the Friends Religious Society, the Maryknoll Sisters, and the Church of the Brothers!"

Now I asked the FBI at our February 23rd hearing to look into this matter and, based on the Bureau's response, I must say that I find the Cincinnati office's statement just an outright falsehood. The facts are that, on one occasion, the FBI asked a person to get them a copy of a leaflet, having to do with a demonstration, that Professor Knitter was distributing. On another occasion, an FBI agent asked about people at Xavier who have traveled to countries of interest to the FBI—presumably knowing full well, that since it had already been in the newspapers, that Professor Knitter and his wife had traveled to Nicaragua. What we have here is a situation where the FBI knowingly asked about some of Professor Knitter's activities and later tried to deny it. So I am really curious as to what is being done with respect to the Cincinnati field office, as well as other field offices that have engaged in more than one or two instances of poor judgment.

Director SESSIONS. Senator, Mr. Toohey may be able to expand on the knowledge that he has on that circumstance. As to the travel, it is my understanding that that was not inquired about other than generically. That is, are there people who are known to be traveling there and in connection with that, the professor's name came

up. So far as I know sir, there was no investigation opened as to Professor Knitter on any one of those occasions, and in fact, it was only an index item because the name came up.

As to the other organizations, so far as I know, sir, again there was no investigation. The names simply came off publications and were put in the index. But there was no investigation that I know of.

Now, Mr. Toohey is here, and he can clarify in those circumstances because he would know factually about them, but I believe I am correct sir.

Senator METZENBAUM. Mr. Toohey, do you want to respond?

Mr. TOOHEY. Yes, Senator. I believe that the statement made by the SAC, the agent in charge of the Cincinnati office, was that no information regarding Professor was solicited. And I believe that was correct, sir. Based on my administrative inquiry, there was an indication that information was volunteered on Professor Knitter to agents who were on the campus for an entirely different reason. But in that——

Senator METZENBAUM. The fact is they asked people to get them a copy of the leaflet. That is certainly soliciting information that Professor Knitter was distributing. On another occasion they asked about people at Xavier who traveled to countries of interest to Nicaragua. They already knew, or should have known, of Professor Knitter's travel. They already had asked the security officer at Xavier University about Professor Knitter. It then became a matter of public information in the Cincinnati papers and television that the FBI was investigating Professor Knitter. Both Professor Knitter and those whom the FBI interviewed publicly spoke about it.

Mr. TOOHEY. It may be a matter of semantics, sir, as to what is meant by investigation. I can tell you precisely what was done, and there was no investigation of Professor Knitter conducted. There was information about him that was volunteered to the FBI that did end up in the files, but no active investigation was conducted. The particular flier that you mentioned had to do with a demonstration that was to take place at the Federal Building in Cincinnati, and it is my understanding that the purpose of obtaining that flier was to verify the time and the place of that demonstration so that that information could be provided to the United States Secret Service and to the Federal Protective Service to assist them in doing their duty, sir.

Senator METZENBAUM. Very well. You say, Director Sessions, there was no reason to expand the CISPES investigation so widely in October of 1983, and I agree with that conclusion. But I want to draw your attention to one particular way in which the investigation was overly broad: the extent to which the FBI investigated groups on college campuses. As you well know and stated, CISPES is an umbrella group for hundreds of groups of sincere Americans who oppose U.S. policy in El Salvador. Many CISPES chapters are in fact college groups.

What was the point of investigating all these campus groups? Was there any logic at all in doing that?

Director SESSIONS. I think the investigation quite naturally followed the trail that was fairly well marked, Senator. And when I

say it was overly broad, I mean that it was overly broad, and I think that it should not have been. I think it should have been restricted as it was in the beginning to the headquarters here and to those other field offices that really had strong contact with it. And I quite agree with you.

Senator METZENBAUM. Judge Sessions, last February I raised questions with the Bureau about disseminating to its field offices a report from a right-wing organization, the Young America's Foundation, without a bit of warning as to the nature of the group that had provided the report. Mr. Revell later testified that this report had gone out over his signature without his knowledge, and he would not have approved of sending it that way.

How do you think the FBI should handle reports from fringe groups like that?

Director SESSIONS. I think I have now provided a mechanism to do that, Senator, where in fact, although we will not characterize the person, the circumstance will be. And I think that that will be taken care of and trust it will.

Senator METZENBAUM. I worry when an FBI field office sends headquarters the Farid Handal trip report from Review of the News, a John Birch Society publication. And I worry when the FBI gets that report from a Republican House staffer and then uses the report in testimony to put it on the record. But I am especially concerned when I learn that the FBI considered using a reporter from the right-wing, anti-Semitic, Liberty Lobby journal, Spotlight, as a source in the CISPES investigation.

I admire your work against real terrorists, but I want to be certain—and I think we need some assurance—that some FBI agent somewhere can't simply decide to use these right-wing outifits to get into something political like the CISPES case. Do you think, with the new procedures that you have put into effect, we can be assured that that cannot be happening?

Director SESSIONS. I think I can, and I think with the characterization of that information that may flow, that we will be able to be sure that that does not happen.

Senator METZENBAUM. I thank you, Judge Sessions.

Director SESSIONS. Yes, sir.

Senator METZENBAUM. Thank you, Mr. Chairman.

Chairman BOREN. Thank you very much, Senator Metzenbaum. Senator DeConcini.

Senator DECONCINI. Thank you, Mr. Chairman, very much.

Judge Sessions, let me say that you give this Senator a great deal of renewed confidence in the Bureau and renew our confidence in your confirmation at a time when you stepped in to a difficult situation, which required instituting an internal investigation. You have done on this case exactly what you said you would. Quite frankly, your statement this morning admits errors were made and that the FBI demonstrates went too far, what our process is all about, what oversight is all about. I thank you for your forthrightness and for that of those who work for you.

I am sure strong feelings exist regarding the justification of some of these investigations. But like you, I think the CISPES investigation went too far. But unlike you, I am not in a position to correct it. I compliment you for the steps you have taken, steps which kind

of demonstrate the leadership the Bureau needs. While I hold the Former Director in the highest respect, I am disappointed the excesses of this case occurred without his knowledge.

What I want to ask is, in your position, knowing what you now know that this can occur and did occur under Judge Webster's directorship, how do you keep a handle on it? How do you know that something isn't going astray today? Do you have people in there who come and give you progress reports? Do you have somebody who is an ombudsman for yourself that goes down and looks in drawers and sees what assistant directors are doing, and what have you? How do you keep a handle on it?

Director SESSIONS. There are several things I think are important. First of all, I think I shared with you at the time of my confirmation hearing that I felt it was very important for me to know that I was hearing what I needed to hear and not necessarily what I wanted to hear. I think there is a danger in any large organization wherever you are, whether it is in the private sector or in government, of people being inclined to only tell you what you are presumably wanting to hear.

What I want to hear is what I need to hear. That is, what is going wrong, where it is, how it is happening. I think that a director, and I am confident that Judge Webster did the same thing, has what he considered to be and certainly what I consider to be, close contact with the field, close contact with the executive conference—that is all of the assistant directors—very close contact with the executive assistant directors on a daily basis. I also have a staff that has assisted me tremendously and continues to, to go down and find out things I want to know.

But I think beyond that, institutionally in any organization, you have to make long range plans and you have to reexamine what is actually being done. And you have to care about it and see how it is actually being carried out. And I think for that reason, this investigation has been extremely helpful to me. Because it has shown me, and it has shown everybody who is involved in it, that at every single level, what you do under the policies of the Bureau is extremely important. What you do under guidelines from the Department of Justice is extremely important. You have got to carry it out. And the discipline that we have discussed here is tied to that negligent failure to carry it out. And so I think——

Senator DECONCINI. Well, how do you know that in Tucson, Arizona, or Phoenix, Arizona, the Bureau is not doing an investigation today, starting one or contemplating one, towards the Episcopal Church that may be trying to aid some Salvadorans or Guatemalans who are coming into this country under questionable circumstances? How do you know that?

Director SESSIONS. I do not know it. I do get reports constantly from the investigative divisions. And they come in to me constantly, and I see them on particular items. And I read them and I initial them. That is one thing that does happen. So that I would probably be aware of that type of thing going on. Second thing is, I don't have any question in my mind that what has happened and will happen by virtue of the discipline that has been given here and by the extensive investigation and the pain of it and the understanding of the unfortunate circumstance—unfortunate light in

which the Bureau was placed, that we will have an alertness to these things. And First Amendment rights and the rights of groups to protest, to assemble, to do these things that are done freely under our Constitution, have to be assured. And I think the procedures will help, Senator. And I think they will do the job. If I didn't think they would do the job, I would do more.

Senator DECONCINI. Thank you, Judge Sessions. That is encouraging.

Let me ask you this. The Sanctuary movement which I have publicly renounced because of its subscription to civil disobedience in Arizona received a great deal of attention with the trial out there.

Director SESSIONS. Yes.

Senator DECONCINI. It is alleged that some of the Sanctuary defendants in the case in Arizona were also investigated under the CISPES investigation. Unless that is in the classified nature, can you confirm that for me?

Director SESSIONS. I do not know whether that is so, but it sounds to me not illogical at all that it happened. And I will be glad to try to confirm it for you. But I do not know at this point.

Senator DECONCINI. If you could confirm that for me and who they were.

Director SESSIONS. To the extent that I can do it, I shall. And I will do that promptly.

Senator DECONCINI. And the conclusion now that the investigation is over, that there is no further investigation as to those people, if in fact there are some similarities there, I would——

Director SESSIONS. The investigations are over—long since over, and I will do that, sir.

Senator DECONCINI. Thank you.

Now we talked about this investigation and the informant who was involved here, Mr. Varelli, is it?

Director SESSIONS. That is correct.

Senator DECONCINI. And there was, according to your internal investigation report, a special agent who supervised and dealt with Mr. Varelli. There were allegations that he kept some of the money from the informant payments made to Varelli.

Director SESSIONS. That is correct.

Senator DECONCINI. Has that been substantiated?

Director SESSIONS. It was substantiated.

Senator DECONCINI. It was substantiated.

Director SESSIONS. Although it was in dispute as to the amount of it, part of that has been repaid, and there is still dispute with Mr. Varelli as to whether he has been fully paid or not.

Senator DECONCINI. And is it of a confidential nature? What amount of money are we talking about that this agent was charged with skimming or taking?

Director SESSIONS. I do not know the exact amount that Mr. Varelli claims was to have been paid to him that was not. If I remember correctly, factually, and Mr. Toohey can probably correct me, there was a repayment by the special agent who was involved, who has now resigned, of approximately $1,000 dollars. But it may have been that there was more that was actually determined to have been paid. I do not know factually. Mr. Toohey may——

Senator DECONCINI. Mr. Toohey can you help us there?

Mr. TOOHEY: To the best of my knowledge, Senator, it was a small amount of money, less than $5,000. Probably closer to the $1,000 that was——

Senator DECONCINI. Less than $5,000 that the agent was supposed to have taken out of the payments to Mr. Varelli?

Mr. TOOHEY. Yes, there is dispute——

Senator DECONCINI. And more likely in the area of $1,000?

Mr. TOOHEY: Yes, sir, that is my best estimate. There is dispute about that between Mr. Varelli and the Bureau at the present time. Based on the records that we had to review——

Senator DECONCINI. How much was Mr. Varelli paid? Is that confidential?

Mr. TOOHEY. I don't know how much, and I don't know if it is confidential.

Senator DECONCINI. OK.

Mr. TOOHEY. We can get that for you and supply it to you.

Director SESSIONS. We can supply the information to you, Senator.

Senator DECONCINI. I am interested in the range of what we are talking about dollar-wise. Primarily, was it $10,000, and did the agent take half of it or did he take 10 percent? Just what his scheme was, that is really what I am interested in finding out.

Mr. TOOHEY. It is an estimate on my part. But it is a very small percentage that may have occurred one, two, three times. We are just not sure.

Senator DECONCINI. I would like to have it for the record, classified or unclassified, whatever is appropriate. If you could deliver it to me or have somebody come tell me what it is——

Chairman BOREN. Have it submitted after it is determined whether or not—which category it would fall, either for the public record or for the classified record.

Director SESSIONS. I will provide it one way or another.

Senator DECONCINI. Now what happened to the agent?

Director SESSIONS. He resigned.

Senator DECONCINI. He resigned.

Director SESSIONS. That is correct.

Senator DECONCINI. Under threat of being disciplined or——

Director SESSIONS. Probably so.

Senator DECONCINI. And was it turned over to the Justice Department for prosecution?

Director SESSIONS. That I don't recall. I think it was discussed with the Assistant United States Attorney. I think prosecution was declined. But I do not recall specifically.

Senator DECONCINI. Does that pose a problem, Judge Sessions, with future agents who assume all they have to do is make recompense and then resign? Who might believe they would not face the court system as would other people who allegedly commit criminal actions? Do you turn that over to the Justice Department to make the criminal determination on whether or not to file?

Director SESSIONS. That is the Justice Department's determination. It is not the Bureau's at all. The Bureau investigates, and the reference was made, and it is my recall that they actually declined, sir.

Senator DECONCINI. So the FBI does not make a recommendation as to prosecution?

Director SESSIONS. I don't know whether there was a recommendation made from the bureau or not. If there was, I don't know of it.

Senator DECONCINI. OK. Judge Sessions, thank you. I don't have any other questions.

Again let me say that your report and testimony today are encouraging, as is, quite frankly, to go through the whole internal investigation process. It is unfortunate that it was necessary to go through the whole investigative process, but it is very encouraging to this Senator that you and the Bureau are willing to address this problem in a most professional way without compromising your obligations to investigate legitimate areas of concern, of terrorism and espionage. But I want you to know that my feeling about the professionalism of the Bureau is renewed. Images mean a great deal in our country, especially in law enforcement. I am pleased that the best way to respond is to be open and forthcoming because when the FBI gets a black eye all law enforcement agencies are damaged.

Director SESSIONS. Thank you, sir.

Senator DECONCINI. Thank you, Mr. Chairman.

Chairman BOREN. Thank you very much, Senator DeConcini.

I want to insert in the record a statement by Senator Warner, and also a statement by Senator Hatch.

[The statements of Senator Hatch and Senator Warner follow:]

PREPARED STATEMENT OF HON. ORRIN HATCH, A U.S. SENATOR FROM THE STATE OF UTAH

Director Sessions, I want to congratulate you and the Bureau on going back and cleaning up your own house in the CISPES matter. The recommendations you've made, I think, show your decisiveness and your quick grasp of the problem. I think that shows real leadership.

Let me just stress that no matter how thorough the review you've just completed, one of the most important factors that has not been borne out in the investigation is the context in which these problems occurred.

A maturing terrorism was on the rise not only internationally, but domestically as well. One of these incidents—the bombing of the Capitol, really struck home to many of us, as to just how our freedom was under attack.

I think under the circumstances the Bureau was prudent to be as thorough as it was. Afterall—, how could you possibly know if this was a legitimate threat unless you did investigate?

During this same time, our government was desperately trying to come to terms with this same maturing terrorism. But in doing so, it saw many faces that terrorism could present. So perplexing was this problem that our government wrestled with what a simple definition of what terrorism was for over 18 months! If there was confusion in the FBI as to how to handle terrorism—it was even more evident in the government as a whole.

I am not being an apologist for the Bureau—there were mistakes made. But I note only one criminal matter presented itself in the course of this investigation and that did not involve the violation of anyone's constitutional rights.

I think the committee should be pleased with your efforts to tighten up the process for dealing with terrorism and your own internal management controls.

PREPARED STATEMENT OF HON. JOHN WARNER, A U.S. SENATOR FROM THE STATE OF VIRGINIA

Today, we have before us Judge William Sessions, the Director of the Federal Bureau of Investigation, to take testimony on the FBI's internal study of its han-

dling of the CISPES case. Judge Sessions, I welcome you and acknowledge the fine job you have done at the Bureau so far.

Before Judge Sessions continues, I should like to make the following remarks to place the CISPES investigation in perspective.

Based on my review of recent FBI counterterrorism activities, I believe that the Bureau must be given high marks for its counterterrorism program. As Mr. Oliver Revell of the FBI stated earlier this year: ". . . the counterterrorism program has been extremely successful. Between 1980 and 1982 there were 122 terrorist incidents in the United States, with 51 occurring in 1982. From that point, the numbers generally declined—to 31 in 1983, 13 in 1984, and 7 in 1985. During 1986 we recorded 17 incidents, 9 of which were bombings or attempted bombings in Puerto Rico. None have been documented in 1987 or 1988." Indeed, Mr. Revell goes on to say that "the FBI has been able to prevent at least 53 terrorist incidents since 1982 that, if not detected, could have resulted in a substantial number of casualties." Mr. Chairman, whatever one thinks about the CISPES investigation, I think we can all recognize the great success of the FBI's counterterrorism program, a program which has been rightfully hailed as one of the finest in the world.

Before proceeding with a review of the FBI's conduct of the CISPES investigation, I believe it is important to recount the history of CISPES and the FMLN. CISPES was created in 1980 to provide international support to the anti-government movement in El Salvador. According to available information, it was established with the assistance of the American Communist Party, the U.S. Peace Council, and the Salvadoran Communist Party. According to its own literature, one of CISPES' primary missions is to provide support to the FMLN. The FMLN is composed of several guerrilla groups and has conducted such terrorist activities as bombings, kidnapings, assaults, and assassinations. The FMLN took credit for the assassination of one of our military advisors in San Salvador, Lcdr Albert A. Schaufelberger, and has drawn up plans to eliminate additional military personnel in El Salvador. Given these facts, plus the information provided by the Salvadoran informant Mr. Verelli, no matter how imperfect it was, it is understandable why, at the time, the FBI would consider opening a counterterrorist investigation. Simply put, without the kind of information-gathering investigations similar to those initiated under CISPES, the FBI's successes in counterterrorism, which I listed above, would not be forthcoming.

Turning now to the CISPES investigation, I believe that we can acknowledge that mistakes were made—that the investigation's scope was too broad in its latter stages, that it lasted too long, and that it should have had closer supervision. Acknowledging these shortfalls, they are the worst that can be said about the investigation. Indeed, all the available evidence indicates that the constitutional rights of our citizens were not violated and that the investigation was not motivated by outside White House or Department of Justice pressure. In short, this was not an investigation intended to intimidate the foes of this administration, as some have alleged.

I should also like to point out that the investigation—which consumed 10 man years before termination—remained small by comparison to other FBI investigations or investigative programs, which can take hundreds of man years to complete. Furthermore, the investigation was nonintrusive. The FBI relied on standard investigative techniques, such as credit or license plate checks, which are among the least intrusive available. Moreover, the FBI terminated the investigation itself, when it deemed, based on a Department of Justice inquiry, that the investigation was not providing sufficient evidence of direct CISPES' involvement in or support to terrorist activities. These facts run contrary to those who suggest that the investigation was out-of-control. A more apt characterization is that, like a team on a playing field, there was some sloppy play during periods of the game, but no major penalties and no overall breakdown of team discipline. When all is said and done, the system essentially worked.

At this point, I would add that, given the 170,000 to 200,000 investigations that the FBI runs annually, many of a large, complex, and sensitive nature, I believe that senior FBI management has performed remarkably well in exercising oversight. As the reports by committee staff and the FBI point out, the CISPES investigation was an isolated matter, not part of a larger pattern of Bureau investigation into political activities. I submit that one reason that the CISPES investigation failed to receive greater attention at higher levels was due to the small scale of effort. Another reason, as suggested above, was its nonintrusive investigatory techniques.

In conclusion, Mr. Chairman, as someone who believes strongly in both good government and protecting the civil liberties of our citizens, I wish to endorse the recommendations made by Judge Sessions. They are prudent and appropriate corrective measures in the areas of training, knowledge of applicable guidelines, and in-

creased internal audits of international counterterrorism investigations. I particularly wish to endorse the effort to review and refine the Attorney General's guidelines for conducting such investigations. I believe that had these guidelines been more clear, the investigation would not have run into some of the difficulties it did. Finally, I wish to state that while the corrective measures taken by Judge Sessions are necessary, they must be understood for what they are—added safeguards to insure that a system which ultimately did not fail, does not fail. Their net effect will not be to shake up an organization which has abused its power; rather, they will further improve and fine tune an already well-run, first-rate institution, an institution which, day-in and day-out, does not deny our civil liberties or well-being, but protects them.

Chairman BOREN. Senator Bradley had indicated to me that he had hoped to return but we appear to be coming to a conclusion of the hearing. He had asked that I direct one or two questions in his behalf if he did not return.

The conclusion states that you found no evidence that any other element of the executive branch, the White House or any other part of the executive branch, had been responsible for the initiation of investigation or had exerted influence to have this investigation continued. Is that correct?

Director SESSIONS. That is absolutely correct.

Chairman BOREN. What was the nature of the investigation, and how broad was the investigation that you utilized in making that determination?

Director SESSIONS. Every single document was reviewed that related to the CISPES case in any way, shape, form or fashion, including internal memoranda, incoming and outgoing memoranda for reports. Mr. Toohey could answer that with specificity. He is here. But it is my understanding that every single document was reviewed.

Chairman BOREN. Mr. Toohey, you did not find anything in any document from any other part of the executive branch that would indicate direction, pushing or urging that the investigation be initiated or continued by others in the executive branch?

Mr. TOOHEY. Absolutely not, sir.

Chairman BOREN. When you were interviewing those involved in the operation itself, or related to the operation, did you also question them as to whether or not they had received any outside direction to commence or continue the investigation?

Mr. TOOHEY. Yes, sir. We interviewed 15 individuals who were in management and supervisory positions at FBI headquarters at that time, and that was from former Assistant Director Webster on down.

We also interviewed every case agent, then supervisor, that was still on duty, and some who had retired, who had any involvement with the CISPES case in the field offices and at headquarters.

Likewise, we interviewed individuals outside the Bureau at the CIA and at the White House itself and conducted checks of computer systems for any types of reference to this type of information.

Chairman BOREN. And you found no evidence in any of these interviews of any kind of outside influence at work?

Mr. TOOHEY. No, sir.

Chairman BOREN. And you did interview the previous Director, Judge Webster, in the course of this inquiry?

Mr. TOOHEY. Yes, sir.

Chairman BOREN. And others in the chain of command below him?

Mr. TOOHEY. Yes, sir.

Chairman BOREN. Thank you very much. I also have for the record a statement from Senator Hollings to insert in the record.

[The statement of Senator Hollings follows:]

PREPARED STATEMENT OF HON. ERNEST F. HOLLINGS, A U.S. SENATOR FROM THE STATE OF SOUTH CAROLINA

Mr. Chairman, I join with you and our colleagues in welcoming Judge Sessions here this morning. Before he speaks, I would like to say a few words about the FBI investigation of CISPES, the committee in solidarity with the people of El Salvador, to try to put this investigation in the right perspective.

We need to place this investigation in the context of the FBI's entire domestic counterterrorism program. That program has been, and still is today, enormously successful. We simply do not have in America the terrorism that plagues Europe, the Middle East, in fact the whole world. Our relative immunity from terrorism is not due to fate or geography. Much of the credit belongs to the FBI's constant vigilance. Mistakes were certainly made in this particular investigation, but this investigation was one small part of a program that has been very effective at protecting Americans from international terrorism.

We also need to consider the tenor of the times in which this investigation was undertaken. It looked at the time as though our shield against terrorism might have been penetrated. A bomb had gone off at the National War College here in Washington. A bomb had gone off right here at the Capitol. So in recalling that period, it is easy to understand why the FBI field offices pursued this investigation with such enthusiasm. Enthusiasm does not excuse the mistakes that characterized this particular investigation. Enthusiasm does not excuse investigative activity that possibly constrains protected first amendment rights. But I for one can understand why that enthusiasm was present.

Enthusiasm in the field needs to be tempered with strong management and sound judgement at headquarters, and those are the qualities that were lacking, in my view, in this investigation. I recognize that the FBI conducts many thousands of investigations annually and that top management cannot scrutinize all of them in detail. But this case was unusual in its predicate and scope and was being conducted under special Attorney General guidelines. It should have stood out to the Director and his staff as a case requiring special attention.

I know that as a result of his review of this matter, Judge Sessions has tightened up the headquarters review process so that cases like this one are managed more intensely. I am interested to learn how he thinks these reforms will work in practice, and what effect they will have on the overall counterterrorism program. Again, I suggest to may colleagues that we keep this matter in perspective and in context.

Chairman BOREN. And I believe Senator Cohen has some questions to ask on behalf of Senator Warner.

Senator COHEN. Director Sessions, Senator Warner asked that I pose the following questions to you.

Based on your knowledge of the CISPES investigation, isn't it correct to say that the laws protecting the Constitutional rights of the American citizens were not violated?

Director SESSIONS. I believe that is absolutely correct, sir.

Senator COHEN. And do you believe there is a pattern of Bureau investigations into the political activities of groups opposed to administration policies?

Director SESSIONS. I believe there are not. There is not a pattern.

Senator COHEN. Those are the two questions he had.

I would just like to conclude with one question to you. An issue was raised about whether or not any credit should be given or reliability placed on certain types of allegations contained in various publications. I think Liberty Lobby or Spotlight was referred to. There may be others.

Does the Bureau have a policy of categorizing publications, be they on the left or right, as to their reliability?

Director SESSIONS. Not as to the reliability. It is my understanding, Senator, that what will happen now is that we will categorize the material and the source but not the person who actually brought it to us.

Senator COHEN. The only question that would raise, you know the old saying, even paranoids have enemies. That one should not dismiss out of hand an allegation coming from a publication by virtue of whether it is associated with the left or with the right.

Director SESSIONS. I agree with that.

Senator COHEN. And that we ought to be very careful about listing those publications that are entitled to credit and a reliability and those that are dismissed as being unreliable.

I think that obviously those are human factors that must be taken into account. But be very careful about having any sort of listing as what is reliable and what is not.

Director SESSIONS. I agree.

Senator COHEN. Thank you.

Chairman BOREN. Thank you, Senator Cohen.

I agree with that statement, and I understand what you are saying is that whether the publication comes from the left, right or center, if it comes from a secondary source, under the new policies that you've established, it will not be taken as true just because it came from a secondary source. But its validity will be tested without regard of which secondary source it came from.

Director SESSIONS. That is correct.

Chairman BOREN. Well again, Judge Sessions, I want to thank you. I think this has been an important hearing. I think it has been an investigation that has been worth undertaking, because we have learned lessons from it, important lessons. I think here the taxpayers' money has been invested in an inquiry that has resulted now, through your action, in some very positive changes being made—improved oversight in terms of management responsibilities within the Bureau and procedures to make sure that that management process has been improved.

I want to commend you for it. I think that while we have discussed today some alarming and disappointing failures of the system in the past, some mistakes have obviously been made, and we cannot take those mistakes lightly. You've certainly demonstrated that you do not. You've demonstrated that your colleagues at the Bureau do not take these mistakes lightly. That indeed you've put much thought and effort into trying to determine how to keep them from occurring in the future.

So I certainly don't minimize the dangers of the kinds of mistakes that have been made in the past. But I have to tell you that I think the sum total of your appearance today is a very positive one for the Bureau, for your role as Director, and for the reputation of the Bureau, because you have indicated in such a forthright manner your willingness to uncover mistakes, your willingness to face up to those mistakes and the consequences, and your willingness to take decisive action to make sure that they don't happen again in the future.

And the net effect of today's hearing, I think, is one of great reassurance, not only to the Members of the Committee but, I think, reassurance to the American people.

People sometimes ask me, does the Congressional oversight process ever work, and can it ever be constructive and not always destructive? And I think what we've seen here is an example on both ends of the government, both the Executive branch and here the Legislative branch, of oversight process working properly at this end, a partnership being established and a real desire to do it right on behalf of the Bureau and the executive branch. And when we can work together this way in this kind of cooperative fashion, it has a very positive result for the public.

And I want to express my appreciation, the appreciation of the Members of the Committee. Members of the Committee who were not able to be with us today have read the information that you have already provided to us and I know will read the full record.

We do plan, I would announce this, we do plan to issue an unclassified report of the findings of our Committee in due time. We will, of course, be receiving from you today the full classified report internal document.

Again, we appreciate the fact that you have made your own internal document available to this Committee. That's a demonstration of great good faith, and it is an indication of trust again between the two branches of government of a kind that I think is very important to maintain.

But I would announce that we will, in due time, as we have a chance to fully deliberate again on your report which we received today, issue a report from the Committee in an unclassified form that can be made available totally to the public.

Thank you very much. And this hearing will stand in recess.

Director SESSIONS. Thank you, Mr. Chairman.

[Thereupon, at 11:47 a.m., the committee stood in recess, subject to the call of the Chair.]

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